SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005

TUESDAY, APRIL 26, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:01 p.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chair of the Subcommittee) presiding.

Mr. COBLE. Good afternoon, ladies and gentlemen. I want to welcome you to this very important legislative hearing before the Subcommittee on Crime, Terrorism, and Homeland Security, to examine the problem of violence in and around our courthouses against judges, prosecutors, witnesses, law enforcement, and other court personnel, and the comprehensive bipartisan proposal recently introduced by my good friends and colleagues, Representative Gohmert and Representative Weiner, H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005."

Recent tragic events—the killing of family members of United States District Judge Joan Lefkow; and the brutal slayings of Judge Rowland Barton, his court reporter, his deputy sheriff, and a Federal officer in Atlanta; and the cold-blooded shootings outside of the Tyler, Texas courthouse—all underscore the importance of security for judges, courthouse personnel, witnesses, and law enforcement. This is a problem which threatens the very integrity of our judicial system.

Our Committee has, for many years, as you all know, focused on the issue of protecting witnesses and victims of crime. That problem continues to exist, but has now grown with recent brutal acts of violence, increasing number of threats, and attempts to derail our civil and criminal justice system.

We must work together in a bipartisan effort to ensure that our judicial system operates in a safe environment. Judges, witnesses, courthouse personnel, and law enforcement must not have to face threats of violence when carrying out their duties.

Our mission here is to provide the resources and the tools necessary to ensure that our judicial system works. Our words must translate into deeds and meaningful reforms and resources.

Courthouse protection does not simply mean in and around the courthouse itself. Security needs to extend to the homes and areas that judges, prosecutors, law enforcement, and witnesses live. Without such protection, justice will truly be denied, as criminals

seek to undermine our justice system; whether it be a disgruntled civil litigant, a dangerous criminal seeking to take out a judge or a prosecutor, kill a gang member who has agreed to testify against other gang members, or murder innocent civilian witnesses who have done nothing wrong other than carry out their civil obligation to testify against a violent criminal.

At the Federal level, the United States Marshals Service carries a heavy obligation to protect those working in the Judicial Branch, as well as witnesses in Federal trials.

The Committee has heard concerns about the United States Marshals' ability to carry out its duties. A recent Inspector General's report raised questions about the marshals' witness protection program. In addition, we've heard that marshals may not have adequate resources to fulfill its mission; that questions have been raised about allocation of resources between the field and headquarters locations; and that arbitrary decisions at the marshals' headquarters adversely affect both morale and security efforts in the field.

The Subcommittee intends to examine these issues, and I'm grateful for my support—for the support of my good friend and colleague, Ranking Minority Member "Bobby" Scott, for his commitment to conduct oversight of the U.S. Marshals Service to determine what, if any, additional measures may be needed.

At the State and local level, I'm very interested in hearing what Congress can do, if anything, to assist in the protection of their courts and their witnesses. I'm already aware of a dire need for assistance in the creation of witness protection programs at the State and local level. As we all know, the bulk of criminal prosecution occurs at the State and local level.

I was disturbed to hear recently that 40 percent of homicide prosecutions in Baltimore, Maryland, are dismissed or derailed by witness intimidation, threats, and violence. Moreover, I was furthermore disturbed to learn that there are existing websites on the Internet which disclose the identity and personal information of judges, witnesses, law enforcement, and other criminal justice personnel. These techniques of witness intimidation must not continue.

I want to take a moment to thank Representative Gohmert, the gentleman from Texas, and Representative Weiner, the gentleman from New York, who have crafted comprehensive legislation in H.R. 1751 to address these issues. I congratulate them for their bipartisan effort.

There's more to be done, and I'm committed to making sure that the Subcommittee continues to examine all these issues. As I said, the integrity of our judicial system is at risk, and we must act now.

And I want to say a word or two about mandatory minimums. They've been kicked around a lot recently. And I'm sure Mr. McNulty is going to address that today. I have——

Mr. SCOTT. I'm going to maybe address it, too.

Mr. COBLE. And the Ranking Member says he may address it, as well.

I have consistently voted in favor of mandatory minimums, but I'm revisiting that. Oh, you can't dare talk against mandatory

minimums; you're soft on crime! Well, I'm not soft on crime, but I want to be sure that there are adequate safety nets.

Folks, when you impose an absolute standard, inevitably, in my opinion, there is going to be an injustice or an inequity imposed at either individuals or groups, small however they may be. I think there's a place for mandatory minimums. But as I revisit it, I want to be doggone sure that there is a safety net; because I'm afraid that sometimes someone may fall through the cracks. Now, the hardline proponents of mandatory minimums: "Oh, no, no one falls through the cracks." Well, that may or may not be true. Paul, you might could educate me more thoroughly on that.

I think, folks, it's a situation where reasonable men and women can differ. I think convincing arguments can be made on each side of this issue. And I'm sure Mr. McNulty is going to address it. The Minority Member implies that he's going to address it. But subject to interpretation, of course.

I don't want anybody to think that I'm abandoning my past support on mandatory minimums, because I'm not. But I want to be sure about the safety net, and I'm not thoroughly convinced it's there. It may well be there.

Having said all that, I guess what I—in conclusion, Mr. Scott, before I surrender it to you——

Mr. SCOTT. Surrender? [Laughter.]

Mr. COBLE. Pardon? What did you say?

Mr. SCOTT. Surrender?

Mr. COBLE. Before I surrender the mike to you. Many advocates see this issue, folks, as all black or all white. I see subtle shades of gray. And I want to visit that more thoroughly.

And having said that, I want to recognize my good friend—I guess he's still a good friend—the Ranking Member from Virginia, Mr. "Bobby" Scott.

Mr. SCOTT. If you're changing your position on mandatory minimums, you're going to become a much better friend.

Mr. COBLE. Well, now, would the gentleman yield? I didn't say I'd change my position.

Mr. SCOTT. Thank you, Mr. Chairman. I'm pleased to join you as we convene the hearing on security in our courts and protecting our judges and others associated with court operations. Unfortunately, as you've indicated, I'm unable to join you in supporting the bill before us because of the extraneous matters that are in the bill.

With several sensational incidents in recent years involving murders of judges, family members of judges, court personnel, witnesses, and others, we've come to see the consequences of insufficient security for our court operations and security for persons associated with them.

All agree that enhancement of security for our courts and all persons associated with them—that increasing that security is imperative. Yet the proponents of H.R. 1751 have chosen to address those needs in a manner apparently calculated to prevent or undermine the prospects of broad bipartisan and general support for that effort.

Unfortunately, H.R. 1751 is yet another effort to use an appropriate issue of concern to the Nation as a vehicle for extraneous controversial and general provisions of the law that are unneces-

sary, costly, and often counterproductive to that concern. Yet again, in this Congress we're considering a bill that purports to address a serious concern, security in the courts, when in essence, the bill is merely a host for more draconian criminal penalties aimed at ensuring that bit players and major players of crime face the same consequences.

Among other provisions in H.R. 1751—among other provisions, H.R. 1751 contains seven new death penalties; a speedy *habeas corpus* procedure to ensure that more innocent people are put to death; and increasing the number by applying the provision to ex post facto, you've got 22 new mandatory minimum sentences, provisions to punish attempts and conspiracies the same as completing the offense.

The *habeas corpus* provision is particularly troubling, given that 119 death row inmates have been exonerated over the last 12 years—that's almost one a month—after languishing on death row for many years. The impact of the provision seems to ensure that innocent people will be executed before they have enough time for the evidence to develop to exonerate them.

As with the Effective Death Penalty Act of 1996, the public rationale undergirding of this provision is apparently that it is inconsistent with an effective death penalty if we let the courts get clogged up by all these innocent defendants.

The public is clearly rethinking the appropriateness of the death penalty in general, due to the evidence that it is ineffective in deterring crimes, racially discriminatory, and it's found much more often now to be erroneously applied. A 23-year comprehensive study of the death penalty found that 68 percent of the death penalties applied were erroneous. That is not surprising that 119 people sentenced to death over the last 12 years have been completely exonerated. It's not surprising that with such a sorry record of death penalty administration that several States are abolishing the death penalty, or had them overturned by courts, or placed moratoriums on their application while studies are being conducted, or just haven't applied a death penalty in many years. Connecticut, for example, hadn't executed anyone for 45 years.

Some have referenced the econometric research of economist Joanna Shepherd as justification for the death penalty. More recently, she has done further analysis and elaboration on her research, and concluded that executions deter murders in six States; they have no effect on murders in eight States; and they increase murders in 13 States. That is the research justifying the death penalty.

Now, mandatory minimum sentences clearly detract from the importance of the bill. Through rigorous study and analysis, mandatory minimums have been shown to be less effective, and thus waste money when compared to more effective approaches in the criminal justice system. And they are discriminatorily applied. And they violate common sense.

Now, Mr. Chairman, I'd like unanimous consent to insert into this record, as we have others, the letter from the Judicial Conference that, among other things, notes that the mandatory minimums violate common sense.

Mr. COBLE. Without objection.

[The information referred to is available in the Appendix.]

Mr. SCOTT. Now, to suggest that opposition of mandatory minimums is soft on crime, I think, is inaccurate. When the plan is cost-ineffective, wasting money, is discriminatory, and violates common sense, it seems to me that opposing such a plan is not soft on crime. Mandatory minimums are just inappropriate, and don't work.

Now, even though you've got the mandatory minimums in there, the ones in the bill appear arbitrary and confusing. For example, under section 7 of the bill, an individual who threatens a witness, victim, or informant, will get a mandatory 10-year sentence. However, the same individual threatening a judge, under section 2 of the bill would only receive a mandatory minimum of 5 years.

Now, we're not going to quote the numerous studies regarding the problems with mandatory minimums. But when we combine the impact of this bill and its mandatory minimums with the impact of similar bills that we're considering—the gang bill and the drug bill recently considered by this Committee—clearly, there will be a massive prison impact if they're all enacted into law. The indications from the Sentencing Commission assessing the impact of the gang bill alone is in excess of $7 billion over the next 10 years. So I hope that you will join me, Mr. Chairman, in requiring a prison impact assessment from the Department of Justice regarding all of these measures.

Just as clearly, Mr. Chairman, with the number of death penalties and mandatory minimums that we have that would apply to incidents that we have seen in our courts. We're not talking about the kind of people that will be deterred by such measures. And I hope we're not going to insult the public by suggesting that some who—somebody who would have shot a judge decided not to because we passed a new mandatory minimum sentence.

So I look forward to the testimony of our witnesses, and I hope that we might actually enhance court security. But finally, Mr. Chairman, let me just say that I have a concern about discussing court security in a public session. And I don't know if you want to join me in this, but I would invite the witnesses, if they have concerns about talking about some of the security issues in public, to invite us to discuss these in private. Sometimes security measures are best not discussed in public. And if some would rather do it in private, I would invite that process. Thank you, Mr. Chairman.

Mr. COBLE. I thank the gentleman. And never has he been so friendly to me. Never, never. But I have not abandoned my other role. I want to make that clear. But I guess the good news—and I'm looking directly at the U.S. Attorney. What attracted me to mandatory minimums to begin with were a couple of features.

Number one, it provided the prosecution with added leverage. I think no one will argue with that. It promoted—or at least it hopefully promoted—consistency in sentencing. If "Bobby" Scott commits a crime, and Howard Coble committed a crime under similar circumstances, hopefully, they will be awarded an identical sentence. That was one of the reasons. I just hope that we have not made the judges too inflexible in doing it.

I'm just thinking aloud today. And we'll visit this, I'm sure, thoroughly as we go along.

Mr. SCOTT. Will the gentleman yield?

Mr. COBLE. Yes, sir.

Mr. SCOTT. The letter that will be introduced into the record from the Judicial Conference points out that, unfortunately, people who commit similar crimes may be very dissimilar in the seriousness of the crime. Just because they violated the same code section doesn't mean that the seriousness of the crime is identical.

And they said that people who are similar will get very different mandatory minimums; whereas those who are the same often get very different sentences. And it's that inconsistency that they point out violates common sense in many areas.

For example, in that drug bill we considered a couple of weeks ago, if you commit a crime within the zone, you get the draconian mandatory minimums; two feet away, outside of the zone, you don't get the mandatory minimum. Two people who have essentially committed the same crime, getting vastly different sentences because of the mandatory minimums.

Mr. COBLE. I thank the gentleman. We've been joined by the distinguished gentleman from Massachusetts, Mr. Delahunt. Good to have you with us, Bill.

Ladies and gentlemen, good to have you panelists, and those in the hearing room, as well. It is the practice of the Subcommittee to swear in all witnesses appearing before it. If you would, please stand and raise your right hands.

[Witnesses sworn.]

Mr. COBLE. Let the record show that each of the witnesses answered in the affirmative.

We have four distinguished witnesses——

Mr. SCOTT. Can we ask them to sit down?

Mr. COBLE. Oh, yes, you may be seated. I stand corrected. You may indeed resume your seats. I'm not used to being—you judges are used to giving directions to that. [Laughter.]

We have four distinguished witnesses with us today. Our first witness is the Honorable Jane R. Roth, U.S. Court of Appeals Judge for the Third Circuit. In addition to serving as a U.S. Circuit Court Judge, Judge Roth is the Chairwoman of the Subcommittee—strike that—of the Committee on Security and Facilities of the Judicial Conference of the United States.

Judge Roth received her undergraduate degree from Smith College, and obtained her law degree from the Harvard Law School. Following law school, Judge Roth served as attorney for Richards, Layton and Finger, and as a United States District Court Judge for the State of Delaware.

Our next judge in line, the honorable—is Judge Kent. In addition to being a constituent of our friend to the far end, Representative Gohmert, she is also a personal friend. And he has asked permission to introduce her today, and I recognize the distinguished gentleman from Texas.

Mr. GOHMERT. Thank you, Mr. Chairman. It is indeed my great pleasure to introduce my good friend, formerly fellow district judge in Texas, Judge Cynthia Stevens Kent. Judge Kent does have over 20 years on the bench. She had been a county court law judge in Texas, beginning back in 1984, and then in '88 went to the district bench; has been a district judge there.

She got her B.A. from the University of Houston in '75; and then 2 years later, got her law degree. She was on the fast track through high school; she was on the fast track through college; she was on the fast track through law school. And she's pretty much been ahead of most of us all her life.

She's also gotten her Master's of judicial studies there at the National Judicial College associated with the University of Nevada at Reno, in '99; and is working on her Ph.D. in the judicial studies program, as well. She's been a faculty member of the National Judicial College since '92; has been a constant teacher and lecturer on continuing legal education, including courses like "Advanced Evidence," "Handling Capital Cases," and "Business Law." She coauthored the *Texas Bench Book for District Judges* and the *Texas Bench Book for County Court Law Judges.* She's written and published on Dalbert issues regarding experts and gatekeepers.

She's been married for 29 years to Don Kent, civil defense attorney. They have three grown sons. She is a constituent, as you said; but even more important to me, she's my dear friend. And I'm proud to introduce Judge Cynthia Stevens Kent. Thank you, Mr. Chairman.

Mr. COBLE. I thank the gentleman from Texas. And good to have you with us, as well, Judge.

Mr. Paul McNulty, United States Attorney for the Eastern District of Virginia, is our third witness. In addition to serving as a U.S. Attorney, Mr. McNulty serves as the Vice Chairman of the Washington Center—Baltimore High Intensity Drug Trafficking Area.

Prior to becoming a U.S. Attorney, Mr. McNulty directed President George W. Bush's transition team for the Department of Justice, and then served as principal Associate Deputy Attorney General. He also served on this very Committee for 8 years, first as a minority counsel, and subsequently as the chief counsel. Mr. McNulty is a graduate of Grove City College, and obtained his law degree from the Capital University School of Law.

Our final witness is the Honorable John F. Clark, United States Marshal in the Eastern District of Virginia. Prior to his current appointment, Marshal Clark served as the Acting Marshal and Chief Deputy Director for the District. He has held numerous senior management positions with the Marshals Service, including Chief of the Internal Affairs Division, and Chief of the International Fugitive Investigations Division. Marshal Clark is a graduate of Syracuse University.

Mr. McNulty, it is good to have you back on the Hill. It's good to have you, Judge Roth, Judge Kent, and Marshal Clark, on the Hill.

Folks, we abide rather rigidly by the 5-minute rule, as you all have been told previously. If you could, confine your oral statements to 5 minutes. And your warning is when the red light illuminates into your eye. That tells you the ice on which you have been skating is thin. Then you will terminate.

Now, we're going to make an exception today, and I don't think there'll be any objection to this. Judge Kent will provide for us a 5-minute presentation—Judge, the film. So you will give your testimony, Judge Kent, and then at the conclusion of your testimony,

we will observe the film that you have brought to show us. And I think that will——

[Discussion off the record.]

Mr. COBLE. I'm told you're going to do the film first. All right. So when Judge Roth completes her testimony, we'll recognize you, Judge Kent, for the showing of the film, and then your oral testimony. And then we'll move along to Mr. McNulty and Marshal Clark.

Judge Roth, you may start.

TESTIMONY OF THE HONORABLE JANE R. ROTH, CHAIR, COMMITTEE ON SECURITY AND FACILITIES, JUDICIAL CONFERENCE OF THE UNITED STATES

Judge ROTH. Thank you, Mr. Chairman.

Mr. COBLE. Your mike I don't think is on, Judge Roth.

The red light to which I referred is on the panel that appears before you all. Judge Roth.

Judge ROTH. Yes, thank you. This hearing presents an opportunity for all of us to heighten awareness of the current state of judicial security, which by statute is provided by the United States Marshals Service.

Mr. Chairman, I am sure that you and the Members of the Subcommittee were horrified when you learned of the murders of United States District Judge Joan Lefkow's husband and mother in her home in Chicago. Subsequent events in a county courthouse in Atlanta serve as a vivid reminder of the potential dangers that participants in the judicial process face in this country every day.

At its March 15 session, the Judicial Conference approved a resolution which calls upon the leaders of the Department of Justice and the Marshals Service to review fully and expeditiously all aspects of judicial security, and in particular security at judges' homes and other locations away from the courthouse. The resolution also calls for adequate funding for this essential function.

The primary statutory duty of the Marshals Service is the protection of the judiciary. The Marshals Service acknowledges its duty to fulfill this role; yet time and time again, we have found that the Service does not have the resources necessary to fulfill this obligation. When we have repeatedly expressed our concern to the Marshals Service and to the Attorney General about Marshals Service staffing levels, we have been assured that the judiciary will be protected. Our requests to examine staffing levels have not, however, been honored. Our requests to participate in the determination of adequate staffing levels have been denied.

And I think, ironically, there is no representative from the Marshals Service headquarters here today to explain those denials.

For years, the Marshals Service has experienced significant staffing shortages. Although we have not been privy to actual staffing allocations by judicial district, many United States Marshals report to us that their staffing levels have been significantly reduced. The Marshals Service has acknowledged to us that the districts are operating up to 30 percent below the number of deputy marshals needed to perform all of the local marshals' responsibilities adequately.

There are examples of Marshals Service staffing shortages across the country, particularly along the southern and southwestern borders. The Federal courts have expressed strong concerns about judicial protection for several decades. In fact, in 1982, the Government Accountability Office issued a report about the dilemma faced by the Marshals Service because its mission is not solely dedicated to the protection of the Judicial Branch.

In that report, it was noted that U.S. Marshals are responsible for accomplishing missions and objectives of both the Executive and Judicial Branches of the Government. The GAO also noted at the time that it believes this is a difficult and unworkable management condition, and that the Director of the Marshals Service cannot properly manage law enforcement responsibilities assigned by the Attorney General, and the operation of the Federal judicial process suffers.

Mr. Chairman, I recognize that this report is almost 25 years old; but as I re-read it in preparation for this hearing, it became clear to me that the concerns outlined in the report are as relevant today as they were when the report was first released. The fact is that the Marshals Service is forced to serve two masters, and that there is constant tension and competition between the Marshals' law enforcement responsibilities and its primary statutory mission of security for the Judicial Branch.

The Marshals Service's judicial security program also has experienced significant budgetary problems because, in our view, its law enforcement responsibilities have higher visibility than prisoner transportation, courtroom and off-site security, and threat assessment for judges and their families.

It seems to my Committee that the Marshals Service never gets the resources it needs to get the job done. The Executive Branch consistently recommends slashing funds before the requests even make their way to Congress. In an op-ed that I penned for the April 9 edition of *The Washington Post,* I called upon key decision-makers to help us. I am therefore seeking your assistance in helping to protect the Federal judiciary in several ways.

In February 1990, after the December 1989 assassination of Judge Robert Vance at his home in Birmingham, Alabama, by an explosive device sent by a disgruntled litigant, the judiciary called upon the Justice Department to implement a program of off-site security for judges. This incident was the third assassination of a Federal judge in recent history. All of these murders occurred away from the courthouse.

The judiciary's request after the Vance murder was, in retrospect, a modest one: an education program for judges, their families, and court employees, about security precautions that should be taken when they are not in the courthouse, and a package of security equipment for every Federal judicial officer, including a home intrusion detection system.

Although the Department and the Marshals Service initially supported this approach, the Department abruptly withdrew its support for funding such an initiative in November 1990, just 11 months after Judge Vance's death. That is a cause of a great deal of our frustration.

Let me outline for you the steps that we would like you to take in connection with the bill before you——

First, support the request for $12 million that would provide a comprehensive package of off-site security equipment for all judges.

Support section 13 of the bill, that would require consultation and coordination by both the Director of the Administrative Office of the Courts and the Director of the United States Marshals Service regarding security requirements for the Judicial Branch of Government.

Support section 14 of the bill, that would establish significantly greater penalties for the recording of malicious liens against Federal judges.

Support section 15 of the bill, that would provide emergency authority to conduct court proceedings outside the territorial jurisdiction of a court. The need for this legislation became apparent after September 11th.

Support section 17 of the bill, that would provide permanent authorization to redact information from financial disclosure reports that could endanger the filer. It is important for Congress to act soon, because this essential security measure for Federal judges, employees, and their families will expire on December 31.

Mr. Chairman, I thank you for the opportunity to appear before you. I speak on behalf of all the judges throughout the country. They appreciate giving us this opportunity. And I would be pleased to answer any questions you might have.

[The prepared statement of Judge Roth follows:]

PREPARED STATEMENT OF THE HONORABLE JANE R. ROTH

Mr. Chairman and Members of the Subcommittee:

My name is Jane R. Roth. I sit on the Third Circuit Court of Appeals and serve as the Chair of the Committee on Security and Facilities of the Judicial Conference of the United States.[1] This hearing presents an opportunity for all of us to heighten awareness of the current state of judicial security, which, by statute, is provided by the United States Marshals Service, an agency that is part of the Executive Branch's Department of Justice. (See 28 U.S.C. § 566 (a)).

Mr. Chairman, I am sure that you and the members of the Subcommittee were horrified when you learned of the murders of United States District Judge Joan Lefkow's husband and mother in her home in Chicago. Subsequent events in a county courthouse in Atlanta serve as a vivid reminder of the potential dangers that participants in the judicial process face in this country every day. At its March 15, 2005, session the Judicial Conference approved a resolution which calls upon the leaders of the Department of Justice and U.S. Marshals Service "to review fully and expeditiously all aspects of judicial security, and in particular security at judges' homes and other locations away from the courthouse." The resolution also calls for "adequate funding for this essential function." A copy of the resolution is attached to this statement.

STAFFING SHORTAGES A MAJOR CONCERN

The primary statutory duty of the Marshals Service is the protection of the judiciary. The Marshals Service acknowledges its duty to fulfill this role. Yet, time and time again we have found that the Service does not have the resources necessary to fulfill this obligation. When we have repeatedly expressed our concern to the Marshals Service and the Attorney General about Marshals Service staffing levels, we have been assured that the judiciary will be protected. Our requests to examine staffing levels have not, however, been honored. Our requests to participate in the determination of adequate staffing levels have been denied.

For years, the Marshals Service has experienced significant staffing shortages. Although we have not been privy to actual staffing allocations by judicial district,

[1] The Judicial Conference of the United States is the judiciary's policy-making body.

many U.S. Marshals report to us that their staffing levels have been significantly reduced. Some Marshals tell us that the districts are operating up to 30 percent *below* the number of deputy marshals needed to perform all of the local Marshal's responsibilities adequately.

There are examples of Marshals Service staffing shortages across the country, particularly along the southern and southwestern borders. Several years ago the chief district judge in the Southern District of Florida had to make an urgent plea for staffing to the Congress on behalf of his local Marshal. Of particular concern to some judges is the use of contract employees, usually off-duty local enforcement officers, to transport prisoners. Significant resources have been provided by Congress to the Marshals Service in recent years because the judiciary has requested funding that augments the funds requested by the Justice Department for the Marshals Service. In virtually every instance, it is because of the judiciary, not the Executive Branch, that significant levels of additional financial resources have been provided to the Marshals Service. Notwithstanding our efforts, the Marshals Service is still experiencing budget problems.

At this point, the judiciary cannot tell the Congress or any other interested party whether the local Marshals have enough resources and staff. Furthermore, the Department refuses to share any information about Marshals Service staffing levels and formulas or to consider suggestions for change with us. The Judicial Conference's Executive Committee meets twice a year with the Attorney General to discuss security matters. Typically I attend that meeting. At this meeting last month, I expressed my concern to the Attorney General about leadership at the Marshals Service, the vacancies in several critical positions of great importance to the judiciary at the Marshals Service, the need for detailed information about Marshals Service staffing levels, and the need for courtroom security by deputy marshals in all criminal proceedings in which a defendant is present, i.e., not only when a defendant is in custody.

COMPETING INTERESTS AFFECT RESOURCE AVAILABILITY

The problem of available resources is endemic in the system. The federal courts have expressed strong concerns about judicial protection for several decades. In fact, in 1982, the General Accounting Office (now the Government Accountability Office) issued a report about the dilemma faced by the United States Marshals Service because its mission is not solely dedicated to the protection of the judicial branch.[2] In that report, it was noted that "U.S. Marshals are responsible . . . for accomplishing missions and objectives of both the executive and judicial branches of the Government." The GAO also noted at the time that it believes ". . . this is a difficult and unworkable management condition" and that the Director of the Marshals Service ". . . cannot properly manage law enforcement responsibilities assigned by the Attorney General, and the operation of the Federal judicial process suffers."

Mr. Chairman, I recognize that this report is almost 25 years old. But as I reread it in preparation for this hearing, it became clear to me that the concerns outlined in the report are as relevant today as they were when the report was first released. The fact is that the Marshals Service is forced to serve two masters and that there is constant tension and competition between the Marshals' law enforcement responsibilities, which, of course, include fugitive apprehension, asset forfeiture, and witness protection, and its primary statutory mission of security for the judicial branch. The Marshals Service's judicial security program also has experienced significant budgetary problems because, in the view of the Committee on Security and Facilities, its law enforcement responsibilities have higher visibility than prisoner transportation, courtroom and off-site security and threat assessment for judges and their families.

It seems to my Committee that the Marshals Service never gets the resources it needs to get the job done. The Executive Branch consistently recommends slashing funds before the requests even make their way to Congress. In an op-ed piece that I penned for the April 9, 2005, edition of *The Washington Post,* I called upon key decision makers to help us. Some people believe that the Department of Justice will never support full resource levels for the Marshals Service, in spite of any Department of Justice statements to the contrary. Therefore, I am seeking your assistance in helping to protect the federal judiciary in several ways.

OFF-SITE SECURITY

In February of 1990, after the December 1989 assassination of Judge Robert Vance at his home in Birmingham, Alabama, by an explosive device sent by a dis-

[2] *U.S. Marshals' Dilemma: Serving Two Branches of Government,* GGD-82-3, April 19, 1982.

gruntled litigant, the judiciary called upon the Justice Department to implement a program of off-site security for judges. This incident was the third assassination of a judge in recent history. All of these murders occurred away from the courthouse.

The judiciary certainly did not ask for a protective detail for every judge in response to Judge Vance's death, as this was fiscally unfeasible. Its request was, in retrospect, a modest one—an education program for judges, their families and court employees about security precautions that should be taken when they are not in the courthouse, and a package of security equipment for every federal judicial officer, including a home intrusion detection system. Although the Department and the Marshals Service initially supported this approach, the Department abruptly withdrew its support for funding such an initiative in November of 1990, just 11 months after Judge Vance's death. In 1994, GAO issued another report on judicial security that found that the Department of Justice should incorporate consideration of off-site security needs into district security surveys and plans, using risk-management principles to identify, evaluate, and prioritize such needs. After four and a half years, in December 1998, an off-site security policy was ultimately issued by the Marshals Service. The judiciary does not know how effectively the policy has been implemented because it is not privy to any internal policy or program reviews conducted by the Department of Justice or the Marshals Service. Furthermore, it was the judiciary, not the Department of Justice, which initiated the development of a training video and other materials used to educate members of the judiciary about off-site security precautions.

In March of 2004, concerns were expressed by the Department of Justice's Inspector General about the Marshals Service's ability to assess threats, a matter directly related to off-site security. In December 2004, the Director of the Marshals Service reported that progress had been made with addressing the problems outlined in that IG report. But because the Marshals Service and the Department will only share limited amounts of information about how Marshals Service resources are deployed, it's anyone's guess as to whether threats against the judiciary are being handled appropriately. Based on what little we do know, only three people are tasked at Marshals Service headquarters with staffing the Office of Protective Intelligence as a primary responsibility. At one point, these staff members did not even report to the individual responsible for judicial security within the Marshals Service. Threat assessment cannot be a collateral duty. A focused, coordinated program with adequately trained personnel needs to be a priority.[3]

COMMUNICATIONS STRATEGY

I have tried on numerous occasions to establish a working group with the Department that could address both on- and off-site security needs of the judicial branch. One attempt at establishing such a group took place about four years ago—and failed. We had hoped that senior political and career officials would have engaged in this effort. Quite frankly, both the Marshals Service and the Department have refused to participate in a formal standing group that would be charged with assessing security needs for the judicial branch on an ongoing basis. The Committee on Security and Facilities believes that had the group been established, the Marshals Service and the judiciary would have been the obvious beneficiaries and that precious time would not have been lost. After the Department's Inspector General issued its critical report of the Marshals Service in March 2004, I again attempted to create a working group on judicial security. Again, the Department did not engage with us in this effort.

The new Attorney General has established a working group within the Department of Justice to make recommendations on judicial security within sixty days. We greatly appreciate the Attorney General's efforts. Although actions have been taken to obtain input from the judiciary by this group, the judiciary is not a standing member of the group and the group is not specifically focused on security for judges and their families. Based on the past history I have enumerated, I am hopeful, but not confident, that this working group will provide useful advice to the Department of Justice and the Marshals Service. Unfortunately, it is almost two months since the tragic deaths of Judge Lefkow's family members, and the judiciary still does not know what specific plans the Marshals Service and the Department have for addressing our concerns.

[3] It should also be noted that there is presently no permanent head of the Division within the Marshals Service who is responsible for judicial security. An individual has been acting in that position for almost 12 months.

WHAT ACTIONS CAN BE TAKEN TO ASSIST THE JUDICIARY?

Although much remains to be done, this Subcommittee can help the judicial branch in a number of ways at this time by:

(1) Supporting a request for $12 million that would provide a comprehensive package of off-site security equipment for all judges. On April 21, 2005, the Senate passed a supplemental appropriations bill that includes $11.9 million for the U.S. Marshals Service for increased judicial security outside of courthouse facilities, including priority consideration of home intrusion detection systems in the homes of federal judges. I am hopeful that this amendment that was adopted on the Senate floor will be supported in the conference on that bill, and that funds will be provided for home intrusion detection systems for all federal judges.

(2) Supporting section 13 of H.R. 1751 that would require consultation and coordination by both the Director of the Administrative Office of the United States Courts and the Director of the United States Marshals Service regarding security requirements for the judicial branch of government. As described throughout this statement, efforts have been made for decades to obtain information from the Department and the Marshals Service about our security needs. The 1982 GAO report included a recommendation that would require the Director of the Administrative Office of the United States Courts to cooperate with and assist the Attorney General in defining and obtaining pertinent information needed to determine each district court's base-level resource needs for U.S. Marshal personnel, and apprise Congress during the appropriation and authorization process, about the nature and status of any problems related to the use of marshals' resources and actions taken to resolve these problems.

Notwithstanding our best efforts, no information has been provided by the Department that can help us to evaluate whether we are being provided with adequate protection. Therefore, a statutory change is needed to ensure that the judiciary obtains the information it needs to make recommendations about judicial security to key decision makers. As the primary user of marshals' services, enactment of this legislative change will help the judiciary to assess its security needs.

(3) Supporting section 14 of the bill that would establish significantly greater penalties for the recording of malicious liens against federal judges. In recent years, members of the federal judiciary have been victimized by persons seeking to intimidate or harass them by the filing of false liens against the judge's real or personal property. These liens are usually filed in an effort to harass a judge who has presided over a criminal or civil case involving the filer, or who has otherwise acted against the interests or perceived interests of the filer, his family, or his acquaintances. These liens are also filed to harass a judge against whom a civil action has been initiated by the individual who has filed the lien. Often, such liens are placed on the property of judges based on the allegation that the property is at issue in the lawsuit. While the incidences of filing such liens have occurred in all regions of the country, they are most prevalent in Washington and other western states.

(4) Supporting firearms training for judges. Threats against federal judges continue at a disturbing rate. Security of judges is oftentimes a personal matter. For that reason, the Judicial Conference supports a proposal to allow judges to carry firearms from state-to-state. The Judicial Conference does not believe it is prudent for judges who carry firearms to do so without effective professional training, or without regular certification of proficiency as a condition precedent for carrying a weapon. All state and federal law enforcement officers receive such training and certification. Federal judges should be required to do so as well. A statutory change would require, as a legal condition precedent to carrying a firearm, that judges be trained and certified in a firearms use and safety program provided by the U.S. Marshals Service with the cooperation of the Judicial Conference. The Department of Justice and the Marshals Service do not oppose this initiative.

(5) Supporting section 15 of the bill that would provide emergency authority to conduct court proceedings outside the territorial jurisdiction of a court. The need for this legislation has become apparent following the terrorist attacks of September 11, 2001, and the impact of these disasters on court operations, in particular in New York City. In emergency conditions, a federal court facility in an adjoining district (or circuit) might be more readily and safely available to court personnel, litigants, jurors and the public than a facility at a place of holding court within the district. This is particularly true in major metropolitan areas such as New York, Washington, D.C., Dallas and Kansas City, where the metropolitan area includes parts of more than one judicial district. The advent of electronic court records systems will facilitate implementation of this authority by providing judges, court staff and attorneys with remote access to case documents.

(6) Supporting section 17 of the bill that would provide permanent authorization to redact information from financial disclosure reports that could endanger the filer. It is important for Congress to act soon because this essential security measure for federal judges, employees, and their families will expire on December 31, 2005.

In 1998, Congress amended the Ethics in Government Act to provide the judiciary with authority to redact financial disclosure reports before they are released to the public. Congress recognized that the judiciary faced security risks greater than those of 25 years earlier when the Ethics in Government Act first became law. Congress established a process by which the judiciary would consult with the United States Marshals Service to determine whether information on a financial disclosure report should be redacted because its release could jeopardize the life or safety of a judge or judiciary employee.

Not a day goes by without some unauthorized incursion into an information database containing personal information. These incursions, when coupled with other personal information already available on the Internet, give wrongdoers the capability to cause harm as never before. Were the redaction authority to be removed from the Act, certain personal information in the financial disclosure reports, not otherwise widely available, such as the unsecured location where a spouse works or a child attends school, may be widely publicized through the Internet and other information outlets. It will become that much harder to maintain the anonymity that has helped in the past to shield judges from personal attacks by disgruntled litigants and anti-government organizations.

We believe that making the redaction authority permanent by removing the sunset provision from section 105(b)(3)(E) of the Act can be done without diminishing the basic purpose of the Act—to allow members of the public to form independent opinions as to the integrity of government officials. The judiciary recognizes the value of providing the public with a way to independently judge the conduct of government officials. The regulations adopted by the Judicial Conference carefully balance judges' security concerns with the public's right to view the information contained in financial disclosure reports. The judiciary has made a concerted effort to ensure that the authority conferred by section 105(b)(3) is exercised in a consistent and prudent manner.

While H.R. 1751, which was introduced on April 21, 2005, addresses most of these issues, the bill also contains various provisions that expand the application of mandatory minimum sentences. The Judicial Conference opposes mandatory minimum sentencing provisions because they undermine the sentencing guideline regime Congress established under the Sentencing Reform Act of 1984 by preventing the systematic development of guidelines that reduce unwarranted disparity and provide proportionality and fairness in punishment. While we recognize the desire to increase the security of persons associated with the justice system, we believe that this can be accomplished without resort to the creation of mandatory minimums.

In addition, section 10 of the bill places specific time frames on the district courts and courts of appeals in considering writs of habeas corpus on behalf of a person in state custody for a crime that involved the killing of a public safety officer. The district court would have to decide motions for evidentiary hearings, conduct any evidentiary hearings, and enter a final decision within specific time periods. The courts of appeals would also have to act within certain time frames in deciding appeals from orders granting or denying such writs and deciding whether to grant a petition for rehearing en banc. The Judicial Conference strongly opposes the statutory imposition of litigation priority, expediting requirements, or time limitation rules in specified types of civil cases brought in federal court beyond those civil actions already identified in 28 U.S.C. § 1657 as warranting expedited review. Section 1657, which provides that United States courts shall determine the order in which civil actions are heard, already recognizes that habeas corpus petitions should be treated as an exception and must be given expedited consideration. The Judicial Conference views 28 U.S.C. § 1657 as sufficiently recognizing both the appropriateness of federal courts generally determining case management priorities and the desire to expedite consideration of limited types of actions.

Mr. Chairman, thank you for the opportunity to appear before your Subcommittee today. Federal judges from throughout the country join me in expressing our appreciation for the time and attention you and the Subcommittee's staff have given to our security needs during these difficult times. We hope that action on the initial steps described above will help facilitate better communication between the judicial and executive branches and ultimately lead to an upgraded and improved United States Marshals Service. I would be pleased to answer any questions you might have.

ATTACHMENT

JUDICIAL CONFERENCE OF THE UNITED STATES
RESOLUTION ON JUDICIAL SECURITY
ADOPTED MARCH 15, 2005

The brutal murders of the husband and mother of United States Judge Joan Humphrey Lefkow of the Northern District of Illinois on February 28, 2005, are an attack against the rule of law in the United States. This tragedy suffered by a member of our judicial family, as well as the horrific events that occurred on March 11, 2005, in the courthouse in Fulton County, Georgia, strike at the core of our system of government. A fair and impartial judiciary is the backbone of a democracy. These tragic events cannot and will not undermine the judiciary's essential role in our society.

We, the members of the Judicial Conference, call upon leaders of the United States Department of Justice and of the United States Marshals Service (whose primary responsibility is the security of members of the federal judiciary and their families) to review fully and expeditiously all aspects of judicial security and, in particular, security at judges' homes and other locations away from the courthouse. We also call upon both the legislative and executive branches to provide adequate funding for this essential function.

Accordingly, the Judicial Conference of the United States declares that (1) the crisis in off-site judicial security evidenced in part by the recent deaths of Judge Lefkow's husband and mother is of the gravest concern to the federal judiciary, and (2) addressing this matter is of the highest urgency to the Conference and will be the top priority in the judiciary's discussions with the Attorney General of the United States and other Justice Department representatives, including the Director of the United States Marshals Service.

Mr. COBLE. Thank you, Your Honor.

Judge Kent, you may proceed with the showing of your film and then your testimony.

TESTIMONY OF THE HONORABLE CYNTHIA STEVENS KENT, 114TH JUDICIAL DISTRICT COURT, SMITH COUNTY, TEXAS

Judge KENT. Thank you, Chairman Coble, Ranking Member Scott, and other Members of the Committee. I am Judge Cynthia Stevens Kent, and I've been a judge in east Texas for more than 20 years.

Before I begin my testimony—I appreciate the time—I wanted to share with you a short video of the terror that I experienced firsthand on February 24, 2005, along with hundreds of east Texas citizens, at the Smith County Courthouse shooting. And they'll play the video at this time. The first part is from a television account, which will give you an overview. And then, we have a security camera in the first floor of the courthouse.

[Video played.]

Judge KENT. Now, the next part is from the security camera on the first floor of the courthouse. I was handling a high-profile capital case, and had added security in my courtroom because of an escape risk. Had I not had that, these officers would not have been at the courthouse to respond to this situation on the steps of the courthouse, and the assailant would have been able to enter the courthouse or kill more people on the streets.

[Security tape footage played, with commentary by Judge Kent, as follows:]

Judge KENT. That gentleman was John DeNoles, a defense investigator.

You can see on the top left Ms. Arroyo and her son are walking, and they're now being shot at right now by Mr. Arroyo. She is—and he's moved around to the top left. She is now dead.

This is a citizen who was walking into the courthouse, now running into the courthouse to avoid the shots.

Her son has been shot.

Officer Dolison here is now responding, along with Sergeant Alan Langston. Officer Dolison and Langston are looking for the assailant. He's over to the left. Officer Dolison gets shot four times, seriously injured. I'm glad to report, he is now in rehabilitation at this time.

All of the—you know, you can't see anything now because all of the back windows have been shot out of the courthouse. There were 70 bullets found inside of the courthouse after this shooting. That's not including the ones shot elsewhere.

This is a citizen who was outside, diving into the courthouse to avoid the shots.

Sergeant Langston was hiding behind a metal trash can.

We now have Deputy Michael Strickland, Detective Clay Perrett, and Lt. Marlin Suell, who have come out of my courtroom on the second floor to respond to the shooting happening downstairs. They come forward to try to take aim on the assailant outside, who has now killed a private citizen, Mr. Wilson.

Officer Suell has now been hit in the head, struck by a bullet by the assailant. Michael Strickland steps down to reload. Detective Perrett has now just been shot in the head, also. Those were grazing shots, and they did survive those injuries.

Coming now, you're going to see the shooter has now gone to get in his car. He's starting to drive off in that red truck there. There is Investigator Jim Castle, who is responding, being shot at. There is Deputy Brown Carlton, who is now responding, along with Officer Dustin Rust. These officers rush out now to try to follow this gentleman, who's shooting as he goes down the street.

A high-speed chase ensues, and the shooter is killed several miles down the road, after shooting as he drives down the streets of Tyler, in Smith County.

This was an extremely serious situation. And we were just blessed that I happened to be in a high-security case at the time this occurred, so there were some officers available to respond to this situation.

And I'll start my testimony at this time.

Mr. COBLE. Very well.

Judge KENT. Over the years, I have received numerous death threats, as have many judges in America. I am currently the subject of a very serious threat, and would be remiss at this time not to thank Texas Ranger Kenny Ray, and the Texas Rangers, the FBI, the ATF, the Tyler Police Department, the Smith County Sheriff's Office, and the Smith County District Attorney's Office, for their aggressive and professional investigation and protection.

One only has to watch the video that we have just seen to see the bravery and courage of the peace officers that responded to the Smith County shooting, and also to understand the need for H.R. 1751 and other legislation to protect judges and all involved in the judicial system.

As any person in America, it is my personal responsibility to use common sense in protecting myself against acts of violence. As a Texan, I take full advantage of my constitutionally-protected right to self defense. However, these threats are not just a personal threat against me and my family. These are acts of domestic terrorism, and are meant to disrupt our judicial system and our civilization.

I've spoken with many judges in Texas and around the Nation regarding courthouse and judicial security. As you can see from these charts, incidents in court are a real present threat. The National Center for State Courts has graciously assisted me in assembling some information which might be helpful to each of you in your decisions on how to protect our judicial system from disruption and attack.

Last Thursday, in D.C., the National Center, in conjunction with the National Sheriffs Association, hosted the National Summit on Court Safety and Security. Also, there is a chart highlighting their preliminary findings from the summit, which are included in my full written testimony. Many of these findings are also included in Congressman Gohmert's H.R. 1751.

Additionally, I have included recommendations and draft language for amendments for future legislation to enhance the protection of our judicial system. And I'd like to highlight just a few of the most important recommendations, several of which are included in 1751.

First, to make personal security for judges a legislative and law enforcement priority. Congress should provide funding for home and court security systems for the Federal judiciary, and maybe consider a tax credit to State judges who have home security systems installed or upgraded.

Restrictions on Internet and public dissemination of personal information concerning judges, law enforcement officials, jurors, prosecutors, and other court personnel, should be enacted. And systems should be set up to alert law enforcement when someone is accessing that information on judges.

To pass and aggressively prosecute laws which provide tougher penalties for threats, assaults, and murders of judges. And I support the provisions of H.R. 1751 which provide for what you all call mandatory minimum sentencing for threats and crimes of violence against individuals covered by the bill. We call them "punishment ranges" in Texas.

To establish a grant program to distribute funds to enhance security for State courts by providing for assessments, technical assistance, education, and training. And I've attached some suggested language for this proposal.

To create a national clearinghouse to collect and correlate Federal and State breaches of security against judges and our courts, to help develop protocols for aggressively responding to these threats.

To consider legislation which would allow properly trained and certified judicial officers to carry personal protection, even when traveling outside of their home state.

To enhance funding for Federal investigation and prosecution of prison and street gangs in America.

To amend the definition of the "local unit of government" to include State and local courts, to ensure that these courts are eligible to apply directly for Federal funding for justice-related programs.

To include in Federal statutory language the mandate that State courts are included in the planning for the disbursement of Federal funding administered by State executive agencies.

And finally, to create a small set-aside of the homeland security funding, to assist State courts in meeting the requirements of the USA PATRIOT Act of 2001, and providing for security needs of the State courts. And I've attached some proposed language for congressional consideration.

Even in America, we certainly face foreign threats against our way of life. I know that each of you is thoughtful and serious in your approach to keep us free and safe from these foreign security threats. The domestic threats against the judicial system are also very real, and certainly worthy of your attention and thoughtful legislation. And I thank you for your time this afternoon.

[The prepared statement of Judge Kent follows:]

PREPARED STATEMENT OF THE HONORABLE CYNTHIA STEVENS KENT

My name is Cynthia Stevens Kent and I serve as Judge of the 114th Judicial District Court in Tyler, Smith County, Texas. I have been invited by the Chair of this Committee, Representative F. James Sensenbrenner, Jr. of Wisconsin and by the sponsor of H.R. 1751, Representative Louie Gohmert of Texas, to testify regarding judicial security issues from the perspective of a State Judge.

I appreciate the invitation and I hope that I can do justice in expressing some of the security concerns and needs of the state judiciary in America. The state judiciary appreciates this committee and Congressman Gohmert's and Congressman Anthony Weiner's interest and attention to crime, terrorism and security concerns as they relate to the security of judges, witnesses, jurors, and other court participants and personnel.

I have served as a judge in East Texas since 1984. From 1984 to 1988 I served as a County Court at Law Judge with general civil jurisdiction and misdemeanor criminal jurisdiction. From 1989 to the present I have served as a state district court judge with general civil jurisdiction and felony criminal jurisdiction and have presided over thousands of cases. I am a past Chair of the Judicial Section of the State Bar of Texas and Past Chair of the Texas Center for the Judiciary, Inc., on the faculty of the National Judicial College and the Texas Center for the Judiciary. I have been an invited faculty member at numerous judicial conferences across the United States. I am privileged to have served our nation and the state of Texas as a member of the judicial branch of government.

Our American system of self government includes an important defender of liberty and critical check and balance in the state and federal judicial system. Recently, there is increased discussion and debate regarding decision making by the judiciary. Some agree with certain decisions and others disagree. However, I know that almost all of the members of the American judiciary are hard working people who carefully listen to the facts of cases and scholarly apply the laws passed by the legislatures within the restraints of our various constitutions. This is my work as a simple country judge.

We have seen the problems of societies without strong and independent judicial systems. We have seen the disruption of civilizations where members of the judiciary are threatened, kidnapped, and killed.

Several years ago in D.C., I attended a National Judicial College course entitled "When Justice Fails." This course discussed the threats and intimidation used against the judicial system in Nazi Germany and the ultimate failure of the judges to protect the rights, freedoms, liberty and life of the minority and oppositional voices in the world. Today we see that disruption in some South American countries whose judges are threatened and killed because someone disagrees with their decisions or enforcement of the law.

Even in America we certainly face foreign threats against our way of life. I know that each of you is thoughtful and serious in your approach to keep us free and safe from those foreign security threats. The domestic threats against our way of life is also very real and certainly worthy of your attention and thoughtful legislation.

H.R. 1751, a bipartisan bill, is a thoughtful and wonderful start to addressing the need to protect judges, prosecutors, jurors, witnesses, and those who are involved in our judicial systems. It is proposed federal legislation and so rightly focuses on security for federal courts and judges. However, there is much that Congress can do to assist the states in enhancing security for state courts, judges, and those required to attend court proceedings.

Many of you are aware of the recent, tragic, and much publicized shooting outside the Smith County courthouse where I work. We are all aware of the murder of Judge Joan Lefkow's husband and mother and the murder of Judge Rowland Barnes, his court reporter, his deputy sheriff, and a federal officer in Atlanta. These are domestic attacks against individuals and against our system of justice which have occurred in the last two months.

Over the years, I have received numerous death threats, as have many judges in America. I am currently the subject of a very serious threat and I would be remiss not to thank Texas Ranger Kenny Ray, the F.B.I., ATF, Tyler Police Department, Smith County Sheriff's Office, and Smith County District Attorney's office for their aggressive and professional investigation and protection. One only has to watch the video's I have provided Congressman Gohmert from the February 24, 2005 shooting in Tyler to see the bravery and courage of the peace officers as they respond to the Smith County shooting. The common threat of professionalism and valor of these public servants in Tyler, Atlanta, Chicago, D.C., New York City, and around the nations is remarkable and we are blessed to have these men and women protecting and serving America.

Although some of these threats against the judiciary are by mentally disturbed individuals who would not actually carry out their threat, many of these threats are very real and imminent concerns.

As any person in America, it is my personal responsibility to use common sense in protecting myself against acts of violence. As a Texan, I take full advantage of my Constitutionally protected right to self defense. However, these threats are not just a personal threat against me and my family, these are acts of domestic terrorism and are meant to disrupt our judicial system and our civilization.

I have spoken with many judges in Texas and around the nation regarding courthouse and judicial security. The National Center for State Courts has graciously assisted me in assembling some information which might be helpful to each of you in your decisions on how to protect our judicial system from disruption and attack. The National Judicial College and the Texas Center for the Judiciary, Inc. have also assisted me in gathering information for this presentation. Finally my twenty years of service as a state judge handling dangerous people and high profile cases has helped me formulate a number of suggestions for your committee's consideration.

1. Personal security for judges should be a legislative and law enforcement priority.
   A. Congress should provide funding for home and court security systems for the federal judiciary.
   B. Congress should provide a tax credit to state judges to have home security systems installed or upgraded.
   C. Public access to certain private information on judges should be limited or pulled, if requested, from public view. For example diagrams of the judge's homes should not be included on the website of the local tax appraisal district.
   D. Systems should be set up to alert law enforcement when someone is accessing public information on judges.
2. Laws which provide tougher penalties for threats, assaults, and murders of judges should be passed and aggressively prosecuted. I support the provisions of H.R. 1751 which provide mandatory minimum sentences for threats and crimes of violence against individuals covered by the bill.
3. Establish a grant program to distribute funds to state courts to enhance security for state courts. This grant program should include provisions for evaluating court facilities and procedures, technical assistance to implement needed improvements, enhanced security equipment, technology and operations, enhanced information sharing, and to develop and provide for the education and training of judges, law enforcement personnel, court house security and court personnel on security procedures and appropriate responses to a crises situation
4. A national clearing house should be created to collect and correlate federal and state breaches of security on judges and develop protocols for aggressively responding to these threats.

5. Consider federal legislation which would allow properly trained and certified judicial officers to carry personal protection when traveling outside their home state.
6. Provide additional funds to the U.S. Marshall's office to enhance their invited security audits of state, and local courthouses and availability to assist local law enforcement in developing security plans and protocols to deal with threats against the judges, prosecutors, courthouses, jurors, witnesses, and other court personnel.
7. Enhance funding for federal investigation and prosecution of prison and street gangs in America. Provide additional funding for federal officers to assist state officers in the investigation and prosecution of prison and street gangs.
8. Provide federal judges with emergency communication devices to law enforcement with GPS capabilities.
9. Provide tax credits to state judges to purchase emergency communication devices to law enforcement with GPS capabilities.
10. Review and amend rules and regulations of prisons in handling mail marked "legal mail" to protect against biological terrorism and gang organized threats against the judiciary.
11. Amend the definition of "local unit of government" to include state and local courts to ensure that these courts are eligible to apply directly for federal funding for justice related programs.
12. Include in federal statutory language the mandate that state courts are included in planning for disbursement of federal funding administered by state executive agencies.
13. Create a small set-aside of Homeland Security funding to assist state courts in meeting the requirements of the USA PATRIOT Act of 2001 and providing for security needs of the state courts.

The above suggestions are just a few ways in which Congress could assist in protecting the judiciary and America from foreign and domestic enemies of freedom. Many of these same proposal should also extent to jurors, prosecutors, defense attorneys, witnesses, and court personnel.

When judges are subject to threats, intimidation, and assault, our entire system of justice is under attack. Although free dialogue and public debate regarding judges is certainly important and constitutionally protected, responsible legislators and politicians should understand that when someone paints with a broad brush the simple country judges of America can be smeared with the partisan paint of the day. Inciting the public to distrust, disrespect, or threaten the members of the judicial system only invites anarchy. There are good and bad judges just as there are good and bad plumbers. However, keeping our judges secure and independent helps prevent justice from failing the designs of our founding fathers and the needs of 2005 America.

ATTACHMENT

Suggested Amendments to **HR 1751, The Secure Access to Justice and Court Procedures Act of 2005**

Insert the following new section 1 and renumber sections accordingly

Sec. 1 Findings.

a. The safety and security of the judiciary, court personnel, court protection officers and those involved in the judicial process at the federal, state and local level is critical to the rule of law.
b. Recent events where members of the judiciary, their family, court personnel and court protection officers have been murdered in the performance of their responsibilities represent the growing challenge that if not addressed will undermine the ability of the Nation's courts to fulfill their responsibilities.
c. Judicial and court security are important elements of strong domestic security
d. There is a critical need to improve the safety and security of federal, state and local judiciary and the venues where courts conduct business.

Insert the following a new section 2 and renumber the sections accordingly

Sec. 2 Purposes.

The purposes of this Act are to:

a. To enhance the personal security of judges in federal, state and local courts.
b. To enhance the security of court employees, protection officers, attorneys, parties to a case and the general public in judicial proceedings in federal, state and local courts.
c. To assist federal, state, and local officials in improving the security of the judiciary and judicial proceedings.

Insert new section 23

Sec. 23. Funding for State Courts to Assess and Enhance Court Security to Combat International and Domestic Terrorism

The Attorney General, through the Office of Justice Programs,
(a) shall make grants, in accordance with this section, to the highest State courts in States participating in the program, for the purpose of enabling such courts--

(1) to conduct assessments focused on the essential elements for effective courtroom safety and security planning. The essential elements include, but are not limited to:
(A) operational security and standard operating procedures;
(B) facility security planning and self-audit surveys of court facilities;
(C) emergency preparedness and response and continuity of operations;
(D) disaster recovery and the essential elements of a plan;
(E) threat assessment;

(F) incident reporting;
(G) security equipment;
(H) developing resources and building partnerships; and
(I) new courthouse design; and

(2) to implement changes deemed necessary as a result of the assessments.

(b) APPLICATIONS- In order to be eligible for a grant under this section, a highest State court shall submit to the Attorney General an application at such time, in such form, and including such information and assurances as the Attorney General shall require.

(c) ALLOTMENTS-

(1) IN GENERAL- Each highest State court which has an application approved under subsection (b), and is conducting assessment activities in accordance with this section, shall be entitled to payment, for each of fiscal years 2006 through 2011 of an amount equal to the sum of $85,000 plus the amount described in paragraph (2) for each of such fiscal years.

(2) FORMULA- The amount described in this paragraph for any fiscal year is the amount that bears the same ratio as the number of adults in the State bears to the total number of such individuals in all States of which the highest State courts have approved applications under subsection (b).

(d) USE OF GRANT FUNDS- Each highest State court that receives funds paid under this section may use such funds to pay--

(1) any or all costs of activities under this section in fiscal year 2006; and

(2) not more than 75 percent of the cost of activities under this section in each of fiscal years 2007 through 2011.

(e) The Attorney General, through the Office of Justice Programs, shall make a grant to non-profit organization for purposes of providing models to implement the provisions of this section.

Replace existing section 20 and insert as new Section 24

Sec. 24. Eligibility of State Courts for Certain Federal Funds and Collaboration Between Executive and Judicial Branches

a) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3791 *et seq*, is amended by inserting in the "*Definitions*" provision a new subsection (c) and renumbering the subsections accordingly, "the judicial branch of the state or unit"

b) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3711 *et seq* shall be amended to insert after each grant program the following language.

In the development of the grant application, the States and units of local governments must consider the needs of the state judicial branch in strengthening the administration of justice systems and specifically sought the advice of the chief of the highest court of the State and, where appropriate, the chief judge of the local court, with respect to the application.

Appropriations Language:

House Report No. - MAKING APPROPRIATIONS FOR THE DEPARTMENT OF HOMELAND SECURITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2006, AND FOR OTHER PURPOSES

For purposes of eligibility for funds under this heading, any county, city, village, town, district, borough, port authority, transit authority, intercity rail provider, commuter rail system, freight rail provider, water district, regional planning commission, council of government, Indian tribe with jurisdiction over Indian country, authorized tribal organization, Alaska Native village, independent authority, special district, or other political subdivision of any state, *including the judicial branch of the state or political subdivision,* shall constitute a 'local unit of government.'

Amending Authorization Language

Section 1014 (c)(3), 42 USC 3714(c)(3), of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, is amended by inserting a comma after the word "section" and the following language:

of which 3 percent shall be allotted to the judicial branch of the state or local government,

Present Law

House Report 108-774 - MAKING APPROPRIATIONS FOR THE DEPARTMENT OF HOMELAND SECURITY FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2005, AND FOR OTHER PURPOSES, Pub Law 108-334 (October 18, 2004)

The conferees view state and local jurisdictions' ability to detect, prevent and respond to a terrorist attack as a high priority. State and local responders are first to arrive on scene when a terrorist attack occurs and must be prepared to protect life and property. This function is inherently non-federal, although federal resources and expertise are needed to manage the crisis, and provide support to state and local assets when an attack overwhelms their resources. For purposes of eligibility for funds under this heading, any county, city, village, town, district, borough, port authority, transit authority, intercity rail provider, commuter rail system, freight rail provider, water district, regional planning commission, council of government, Indian tribe with jurisdiction over Indian country, authorized tribal organization, Alaska Native village, independent authority, special district, or other political subdivision of any state shall constitute a `local unit of government.'

Section 1014 (c)(3), 42 USC 3714(c)(3), of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001

GRANT PROGRAM FOR STATE AND LOCAL DOMESTIC PREPAREDNESS SUPPORT

(a) IN GENERAL- The Office for State and Local Domestic Preparedness Support of the Office of Justice Programs shall make a grant to each State, which shall be used by the State, in conjunction with units of local government, to enhance the capability of State and local jurisdictions to prepare for and respond to terrorist acts including events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices.

(b) USE OF GRANT AMOUNTS- Grants under this section may be used to purchase needed equipment and to provide training and technical assistance to State and local first responders.

(c) AUTHORIZATION OF APPROPRIATIONS-

(1) IN GENERAL- There is authorized to be appropriated to carry out this section such sums as necessary for each of fiscal years 2002 through 2007.
(2) LIMITATIONS- Of the amount made available to carry out this section in any fiscal year not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

(3) MINIMUM AMOUNT- Each State shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section except that the United States Virgin Islands, America Samoa, Guam, and the Northern Mariana Islands each shall be allocated 0.25 percent.

Mr. COBLE. Thank you, Your Honor.
Mr. McNulty.

TESTIMONY OF THE HONORABLE PAUL J. McNULTY, UNITED STATES ATTORNEY, EASTERN DISTRICT OF VIRGINIA

Mr. MCNULTY. Mr. Chairman, it's a delight to be here today—I should know how to use microphones by now—to see you, Mr. Chairman, and Mr. Scott, my fellow Virginian. His district includes large portions of the Eastern District of Virginia. And Mr. Delahunt, it's nice to see you again, and to meet Congressman Gohmert.

This subject, of course, is most important, to discuss the safety of our judges, prosecutors, law enforcement officials, victims, and witnesses involved in the American judicial system.

Really, this is about all citizens who come in contact with the system of justice; because as that video so graphically depicted, people coming to do business at the courthouse, for all kinds of reasons, can be subject to harm as a result of these attacks on the administration of justice. And really, it's an attack on the rule of law; because our entire way of life as Americans is built upon the rule of law, and this requires the safe administration of justice.

I'd like to discuss some of the impact of these incidents on the Eastern District of Virginia. The recent events—but in fact, going back to Oklahoma City—have really heightened our concern for safety at the Federal courthouse in Alexandria, Virginia. The effects of domestic terrorism, like the Oklahoma City bombing, and the threat of international terrorism on the security of the Federal courthouses and U.S. Attorney facilities around the country, have been felt especially—those threats have been felt especially in Alexandria.

Our Federal courthouse complex was actually being built when the Oklahoma City bombing occurred. And as a result, security upgrades were installed, such as a blast wall, and intrusion detection devices, and the elimination of public parking in the building.

Since September 11, however, concern has increased about threats to the courthouses generally, and to U.S. Attorney offices. In the Alexandria courthouse complex we have made many changes. Visible security enhancements were installed, including jersey walls, hydraulic barriers, camera systems, screening devices, shelters in place, and chemical detection systems. In fact, Mr. Chairman, I venture to say that probably no courthouse in the United States has gone through more security changes more rapidly than what's happened in Alexandria over the past 3 years. It's really transformed the entire neighborhood.

In addition, a court security committee has been in place for many years in Eastern Virginia. The focus of the committee is the security of the court complex in Alexandria, as well as the other judicial facilities in the district. We have a courthouse in Richmond, a small courthouse in Newport News, and also in Norfolk.

The purpose of this committee is to discuss security issues between the Marshals Service and the court family. There are periodic meetings, chaired by the chief judge, and it gives opportunities for the court to discuss security concerns and give approval to proposed security upgrades.

My office has a very close working relationship with the marshals, and we have participated in the court security meetings on several occasions. The marshal and I, John Clark, frequently share threat and event information so that our individual responses are well coordinated with regard to the safety and security of our witnesses, the potential threat level of cases being indicted, and the possible public and press attention high-profile cases might receive.

On almost a daily basis, as I turn into the garage in the courthouse, I now see deputy U.S. Marshals dressed in their tactical gear, armed with semi-automatic weapons, standing along the sidewalk; in marked contrast to the pre-September 11 security.

And last week was a very interesting example of the threat faced by those who work in our courthouse in Alexandria. We were in the midst of a trial involving an individual named Ali Al-Timimi, who just earlier today was convicted with providing material support to terrorist organizations, a sequel to our Virginia Jihad case.

At the same time, we were also in the middle of a trial of four MS-13 gang members for capital murder of a Federal witness. This 17-year-old witness was pregnant at the time of her murder. She was going to testify in another MS-13 murder case, when she was allegedly stabbed to death. The order to murder her, as alleged in our indictment—and I say this case is currently being prosecuted, so I'm speaking just in terms of the allegations—was given from the jailhouse.

And on top of all of this—the Timimi trial, the MS-13 murder case—we also had the Moussaoui plea, and that occurred last week, as well. So the Marshals Service and the court security officers were working especially hard. And we see these kinds of challenges at the State level, and my testimony includes some of that. I also discuss in my testimony the threats faced by judges.

I want to say, in conclusion, Mr. Chairman, that Federal prosecutors—I really want to speak for just a split second about the Federal prosecutors' threat. They face enormous threats in their jobs. And in my testimony, I describe the percentage, or the numbers of threats against Federal and local prosecutors, and the kinds of—types of threats they've seen.

And we've had some of these cases in my district, but one in particular, in Seattle, Washington, in October of 2001, involved the murder of an Assistant United States Attorney, Tom Wales. He was working at home, and he was shot by a sniper through his window of his house. That case has not been solved yet, and it has been a real wake-up call for all of us in the U.S. Attorney community.

So in conclusion, Mr. Chairman, I want to thank you for holding this hearing and for drawing attention to this very important subject. I think we have to be proactive. We can't just wait until these crimes occur. And I thank the Committee for its interest in the subject. I'm happy to answer your questions.

[The prepared statement of Mr. McNulty follows:]

PREPARED STATEMENT OF PAUL J. MCNULTY

Department of Justice

STATEMENT

OF

PAUL J. McNULTY
UNITED STATES ATTORNEY
EASTERN DISTRICT OF VIRGINIA

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 1751,
THE SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005

PRESENTED ON

APRIL 26, 2005

STATEMENT OF PAUL McNULTY
UNITED STATES ATTORNEY
FOR THE EASTERN DISTRICT OF VIRGINIA

Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives

April 26, 2005

Chairman Coble, Ranking Member Scott, and Members of the Subcommittee, I am Paul J. McNulty, United States Attorney or the Eastern District of Virginia. It is an honor to appear before you today to discuss the important issue of the safety of our judges, prosecutors, law enforcement officials, victims, and witnesses involved in the American judicial system.

Concern over the safety of individuals involved in the judicial process has been escalating over the last several years, coming to a dramatic crescendo in February and March of this year when a state court judge was killed and members of a federal judge's family were murdered. Violence and threats of violence against those who administer justice or who discharge their duty as jurors and witnesses tear at the very fabric of the rule of law. We cannot let the insidious effects of pre-emptive threats by criminal or civil litigants, or fear of retaliation, influence or chill the decisions and actions of those upon whom our citizens rely to redress both public and private grievances.

In August of 1993, a criminal defendant by the name of Gary McKnight was scheduled to be sentenced on marijuana manufacturing charges. His farm, where he raised his illicit crop, had been forfeited to the United States. The night before he was to appear in federal court in Topeka, Kansas, he armed himself with two handguns and made 24 shrapnel bombs filled with live ammunition. On his

way to the courthouse the next day, he left a truck containing explosives in front of an Oskaloosa sheriff's department annex. The truck later exploded. At the federal courthouse, McKnight headed toward the United States Attorney's offices. He mistakenly got off the elevator on the floor housing the Clerk of Court, where he shot and killed a Court Security Officer (CSO), wounded another CSO, and shot a receptionist three times. Inside the office he wreaked havoc and devastation by igniting improvised explosive devices. The rampage ended when he killed himself. The place looked like a war zone, and indeed it was. The night before, McKnight recorded a statement on a video tape. His intent was clear when he said:

> They declared war on me. I'm just answering . . . Let me die on my feet, rather than live on my knees . . . .

Even more chilling was one of his final statements, in which he said:

> There's only one rule in a gun fight – bring a gun. I got mine, let's see if they got theirs.

Two years later, a complete side of the Alfred P. Murrah Federal Building was blown away by 5,000 pounds of explosives, leaving168 dead and hundreds wounded. Eight of the dead were federal agents. The recent ten-year anniversary of that tragic event reminds us again of the risk that government employees encounter by simply being public servants.

The effects of domestic terrorism, like the Oklahoma City bombing, and the more contemporary threat of international terrorism on the security at federal courthouses and U.S. Attorney facilities can be seen around the country, but perhaps no more poignantly than in Alexandria, Virginia. Our federal courthouse complex was being built when the Oklahoma City bombing occurred. As a

result, security upgrades were installed, such as a blast wall, intrusion detection devices, and the elimination of public parking in the building's garage.

Since September 11, concern has increased about threats to those courthouses and U.S. Attorney's Offices where terrorists and their allies are being brought to justice. In the Alexandria courthouse complex, for example, visible security enhancements were installed, including jersey walls, hydraulic barriers, camera systems, screening devices, shelters-in-place and chemical detection systems. On February 8, 2002, we participated in a drill with federal, state and local law enforcement and first responders, including the elite U.S. Marine Chemical Biological Incident Response Force, to test the collective reaction to a notional chemical attack on the courthouse.

In addition, a court security committee has been in place for many years. The focus of the committee is the security of the court complex in Alexandria, as well as the other judicial facilities in the District, and the purpose is the joint discussion of security issues between the Marshal, the court and the court family. These periodic meetings, chaired by the chief judge, give opportunities for the court to discuss security concerns and give approval to proposed security upgrades. Which proposals ultimately are implemented depends upon a number of factors, including the willingness of the court to have the security measures in place. Moreover, as I understand it, the level of security in a courthouse may be dependent, in some cases, on the court's willingness to have the security measures implemented.

My office has a very close working relationship with the Marshals, and we have participated in the court security meetings on several occasions. The Marshal and I frequently share threat and event information, so that our individual responses are well coordinated with regard to the safety and security

of our witnesses, the potential threat level of cases being indicted, and the possible public and press attention high profile cases might receive. We also have an informal mutual aid agreement whereby the Marshals respond to duress alarms in our offices, and our nationally certified, medical First Responders respond to medical emergencies in the courthouse and Marshal's facilities.

On almost a daily basis, as I turn into the garage at the courthouse, I now see Deputy U.S. Marshals dressed in their tactical gear armed with semiautomatic weapons standing along the sidewalk, in marked contrast to pre-9/11 security. Last week, the Marshal's high security presence was, in part, a response to the trial of Ali Al-Timimi, who is charged with material support to a terrorist organization, a sequel to the Virginia Jihad case. However, the Marshals are not standing guard only because of the terrorism cases we have pending, but also because of the nature of the violent crime we are prosecuting.

Currently, we are in the middle of a trial of four MS-13 gang members for the capital murder of a federal witness. This 17-year-old witness, who was pregnant at the time of her murder, was going to testify in another MS-13 murder case when she was allegedly stabbed to death. The order to murder her, as alleged in the indictment, was given from the jailhouse. MS-13 is a notoriously violent gang, and we must provide a responsible level of security for all those involved in the administration of justice in these types of cases.

State courts are also faced with these same issues. Fairfax and Prince William Counties in Virginia were the venues for the trials of Malvo and Muhammed, the two Washington, D.C., area snipers. Despite the change of venue, significant security measures still were required in preparation for those trials, and the cost to implement those measures was substantial. Examples of violence in state

courtrooms abound, and as we saw in the Fulton County, Georgia, incident, security has to be increased.

The murder of members of U.S. District Judge Lefkow's family is a recent, egregious example of retribution for her judicial ruling, but not the only example. In 1979, Judge John Wood Jr., was gunned down at his home in San Antonio because the defendants in a Columbian drug-smuggling case thought he would impose a maximum sentence on them. Judge Richard J. Daronco was killed while working in his yard at his home near White Plains, N.Y., by a retired New York City Police Officer in search of revenge for the dismissal of a $2.5 million lawsuit filed by his daughter. A year later, Eleventh Circuit Court of Appeals Judge Robert S. Vance was killed by a mail bomb sent to his home because he did not vote to overturn the defendant's conviction for possessing a pipe bomb. The defendant was convicted in state court and sentenced to death.

There are many more examples of threats to the judiciary which have not resulted in the same level of violence, but have significantly impacted the due administration of justice. Amr Moshen was indicted last month by a federal grand jury in San Francisco in a multiple count indictment, alleging in part that Moshen solicited another person to burn a witness's car in order to intimidate the witness, and that he also solicited another to kill the federal judge who had been handling a federal civil patent case involving the defendant. Moshen was charged under 18 U.S.C. 373, Solicitation to Commit a Crime of Violence, and his trial is pending.

In January of this year, David Roland Hinkson was convicted in Boise, Idaho, for soliciting the murders of a U.S. District Judge, a federal prosecutor and an Internal Revenue Service Special Agent, in retaliation for a prior criminal case brought against him. He had offered $10,000 per killing to the

purported contract killer. The judge had not only handled the previous criminal case, but had also dismissed a civil case Hinkson filed alleging that his constitutional rights were violated by the prosecutor and investigator. Hinkson was convicted for violations of 18 U.S.C. 373, Solicitation to Commit a Crime of Violence. Each count of solicitation to commit murder carries a maximum penalty of 20 years incarceration. He was scheduled to be sentenced yesterday.

The Marshal's Service responds on average to 700 threats to the judiciary a year. In 2004, the Marshals provided protective details for 39 judges and prosecutors. The sheer number of threats shows not only the potential danger facing our judges, but how lucky we have been not to lose more judges to litigation-induced violence.

Unfortunately, Judges are not the only ones threatened or killed in the line of duty. In the Hinkson case, to which I just referred, the targets of the murder plot also included the prosecutor and investigator. The National District Attorneys Association is reported to have conducted a survey in 2001 which revealed that 81 percent of large state prosecutor's offices had experienced work-related threats or assaults. There have been more than a thousand members of the United States Attorney's Offices threatened since 1995. This is a conservative estimate, based on "urgent reports" filed by the districts with the Executive Office for United States Attorneys. In Utah, for example, a federal case is currently pending against two individuals for allegedly making, or aiding and abetting in the making, of threats against the federal prosecutor who was prosecuting a RICO case against members of the "Soldiers of the Aryan Culture." These defendants are charged with Mailing Threatening Communications, under 18 U.S.C. 876, and with Conspiracy to Impede or Injure an Officer, under 18 U.S.C. 372. If convicted of both counts, the defendants would face a maximum 16 years in prison.

On October 11, 2001, Assistant United States Attorney Tom Wales was at his home in Seattle, Washington, working on his computer when he was shot by a sniper situated in his back yard. He died the next day. Despite a substantial reward offered by the Department of Justice, Wales's murderer has not been found. While this murder shook the U.S. Attorney community, it was not the first murder of a prosecutor. A national memorial to prosecutors located in Columbia, South Carolina, now displays the names of nine state and federal prosecutors killed since 1967.

Several years ago, threats were made against a female prosecutor and her daughter in connection with the prosecution of a drug gang. The threats were very sexually explicit and very credible. We learned that the Marshal's Witness Protection Program was not a suitable vehicle to relocate her and her family. In the end, we moved her under a different name to another state. The Department of Justice paid for her relocation expenses and assisted her in establishing a new identity.

The response to most threats against federal prosecutors, however, is not as comprehensive. The U.S. Marshal's Service, under certain circumstances, may provide a 72-hour protective detail, which may be extended if the threat is verified and the continuation of the detail is necessary. Bullet proof vests have also been provided to the person threatened. In other cases, the Marshals may simply present a briefing on personal and home security. The U.S. Attorney may also be authorized to pay for a home security system and a cell phone for the threatened Assistant United States Attorney (AUSA). The Deputy Attorney General may, in limited circumstances, authorize a federal prosecutor to be deputized by the U.S. Marshal for the limited purposes of being able to carry a concealed weapon for self protection. The FBI will also investigate the threats against AUSAs. I understand that

there are similar processes in place for the protection of federal judges, which will be described by testimony from a representative of the U.S. Marshal's Service.

But let's be clear, these measures are reactive in nature, and are only effective if we learn about the threats before they are carried out. More severe penalties and broader federal jurisdiction are also after-the-fact responses. Once the threats are received or the violence occurs, the damage has been done. The employees of the Judicial and Executive Branches who interact with violent criminals and disgruntled litigants deserve not only the respect of the nation but also a safe workplace and reasonable protection for themselves and their families.

Conclusion

Threats, intimidation and violence against judges, prosecutors, law enforcement officers, victims and witnesses embolden future perpetrators to intimidate or eliminate their perceived roadblocks to freedom and the violence becomes self-perpetuating. Violence in our courtrooms reduces the integrity and effectiveness of the judicial process, diminishes the public's confidence in our judicial system, and makes cooperation by witnesses and victims less likely. Our challenge is to find ways to help federal and state judicial systems act pro-actively rather than reactively, so that they can fulfill the dream of our forefathers to achieve justice for all, unaffected by untoward, outside influences.

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Mr. COBLE. Thank you, Mr. McNulty.
Marshal Clark.

TESTIMONY OF JOHN F. CLARK, UNITED STATES MARSHAL, EASTERN DISTRICT OF VIRGINIA, APPEARING FOR THE UNITED STATES MARSHALS SERVICE, DEPARTMENT OF JUSTICE

Mr. CLARK. Thank you, Mr. Chairman, Congressman Scott, Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the role of the United States Marshals Service in protecting the Federal judiciary. It is vital to our democracy that those who work within our judicial system do so without any fear or intimidation. Recent tragic events in Chicago and Atlanta highlight the need for securing our courts and protecting those who work in them.

I'm a 22-year veteran of the United States Marshals Service, and I have personal knowledge of the important task of protecting judges in our judicial process. During my career, I have protected Supreme Court justices, district judges, Government witnesses and jurors, and can attest to the fact that it is a difficult and demanding job.

Since my appointment by President Bush to serve as United States Marshal for the Eastern District of Virginia, I have witnessed firsthand the vital importance of protecting our Federal judicial process. Just last week, members of my staff provided a safe and secure environment at the U.S. District courthouse in Alexandria, as terrorism suspect Zacarias Moussaoui entered a plea of guilty to his involvement in the 9/11 terrorist attacks.

During the same week, members of the notorious MS-13 gang were on trial for their alleged involvement in the killing of a former gang member. At that trial, deputy marshals were on hand to ensure that all present were protected.

In yet another matter last week, a jury was being protected during their deliberations on a terrorism-related case.

In recent years, I have come to the realization that events such as these are all in a day's work for the men and women of the United States Marshals Service. Because of this, our security planning and execution needs to be the very best it can be, as failure is not an option.

In the Eastern District of Virginia, I am constantly meeting and consulting with the judges, Mr. McNulty's staff, the clerk of court, U.S. probation, and others who have a stake in protecting the judicial process. On a regular basis, court security and building security meetings are held to review, assess, and make recommended improvements to our existing security plans.

The Eastern District of Virginia was the first in the nation to conduct a terrorism response and readiness drill that simulated a chemical and biological attack within the Federal courthouse in Alexandria. It involved a host of local, State, and Federal emergency response agencies, as well as role-players from the community and the courthouse employee ranks.

More recently, at the U.S. courthouse in Norfolk, the U.S. Marshals Service hosted a training exercise that involved several area police and fire and emergency medical personnel who came to-

gether for a scenario that involved finding and safely disposing of mock explosive devices within the courthouse. Exercises like these test our communication capability and interoperability with first responders and security plans against real-world possibilities.

We rely heavily on our law enforcement partners, and are constantly assessing, adjusting, and improving security measures, and where necessary, to ensure we are as prepared as possible against those who might threaten or harm judges or disrupt our judicial process. In short, it's a team effort.

Throughout our 215-year history, the United States Marshals Service has given the highest priority to our judicial security mission, and we are proud of our accomplishments. Yet we must keep ever vigilant and ready. With threats against the judiciary on the rise, it is vitally important that we all work together to maintain a safe and secure environment for our justice system.

I'm now happy to respond to any questions you may have.

[The prepared statement of Mr. Clark follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN F. CLARK

Department of Justice

STATEMENT

OF

UNITED STATES MARSHALS SERVICE
DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 1751,
THE SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005

PRESENTED ON

APRIL 26, 2005

STATEMENT OF THE
UNITED STATES MARSHALS SERVICE
BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
OF THE COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

APRIL 26, 2005

Mr. Chairman, Congressman Scott, and Members of the Subcommittee, thank you for the opportunity to appear before you today. We appreciate the interest and support that you have given the United States Marshals Service in the past, and look forward to working with you in the future to address the challenges we face in preserving the judicial process.

Since its founding in 1789, the primary mission of the United States Marshals Service (USMS) has been the protection of the federal judicial process. The responsibility is not taken lightly; each and every day – in all 94 Marshals Service districts – 100% of our resources are fully dedicated to this mission.

The protection of judges and courthouses is one of the most important, but least understood, functions of American government. If federal jurists cannot preside over cases and render verdicts free from fear and intimidation in a safe environment, our citizens cannot expect the judicial system to function fairly and impartially. In short, without this protection, the nation would be deprived of its most cherished and fundamental right – justice.

While the "judicial security" mission traditionally has been defined as protection of federal judges and the physical protection of federal courthouses, the full resources of the Marshals Service are devoted to protection of the judicial process, in one or more of the following aspects:

- by providing a secure courtroom environment not only for the judiciary, but for all trial participants, including court employees, prosecutors, federal public defenders, jurors, witnesses, private attorneys, and all who attend federal trials and court proceedings;
- when necessary, by providing for the personal protection of members of the judiciary and their families, so that judges can carry out their official duties without fear of threat, intimidation, or retaliation;
- by applying complex, technical security systems to make the nation's federal courthouses safe from external threats;
- by contracting with and deploying thousands of experienced, well-trained Court Security Officers to screen the daily complement of visitors to our nation's courts;
- by designing and constructing secure facilities for the detention and movement of prisoners and creating secured passageways for the judiciary;
- by safely transporting thousands of federal prisoners to court appearances;
- by providing safe environments for thousands of federally-protected witnesses and their families; and,
- by executing warrants and arresting dangerous fugitives from justice and returning them to custody for proper adjudication of their criminal cases.

Protection of the judicial process is the Marshals Service's highest priority. The FY 2005 Budget provides the USMS with $552 million for judicial protection activities, which is an increase of 5% over FY 2004 spending levels. This includes funding for 94 new Deputy U.S. Marshals for judicial security. The FY 2006 President's Budget requests $586 million for USMS

judicial protection activities, which is a 6% increase over FY 2005. These funds will support 65 additional Deputy U.S. Marshals assigned to judicial security, bringing the total to 2,542. In addition, the Budget will support more than 3,800 contract security officers.

These resources, together with the skill and dedication of our personnel, allow us to achieve great successes. Each day, Deputy U.S. Marshals transport thousands of federal prisoners – some of whom are extremely violent – to their court appearances without major incident. Likewise, the Marshals Service currently handles more than 17,000 witnesses and their families in the Witness Protection Program. No federally-protected witness who has followed the program's rules has been harmed. Finally, in the 215 years since the USMS was founded, no federal judge has been murdered in a courtroom or courthouse. However, since we are aware of the vulnerabilities of the judicial family outside of the courthouse in an ever-changing threat environment, we continually review, evaluate, and improve our protective procedures.

The tragic deaths of the husband and mother of Judge Joan Humphrey Lefkow in Chicago, and of Judge Rowland Barnes and his court colleagues in Atlanta, have brought national attention to the issue of judicial protection. However, a distinction should be made between state and local practices, and the court security procedures that are in place within the Marshals Service. We welcome the opportunity to make these distinctions and discuss our procedures with the Subcommittee.

Protection and Security Services Provided to Federal Judges

The Marshals Service's attention to the personal security of a judge begins soon after he or she is nominated. Shortly after their nomination, the USMS provides all new federal judges with a comprehensive briefing regarding their personal security and the range of security

services offered by the USMS, both inside the courthouse and away from judicial facilities. These briefings are conducted at the highest level, generally by the USMS Assistant Director for Judicial Security himself.

Orientation and training topics include a variety of security issues, such as: personal and residential security, both inside and away from judicial facilities; arranging mail delivery to a judge's office rather than a judge's home; the application, installation, and upgrading of home security systems; ensuring that personal information is removed from the public arena, such as telephone directories and Internet sites; vehicle and air travel safety; and changes in landscape designs around the home. Judicial Security Inspectors also offer to undertake a residential security survey of a judge's home to assess a wide range of security issues.

Throughout their judicial careers, the USMS continues to provide security briefings in various situations and formats, including specialized publications and personal meetings with experienced Deputy U.S. Marshals who are trained as Judicial Security Inspectors. As long as they are on the bench, federal judges receive regular security briefings and surveys, covering every aspect of their professional and personal life. If a judge is threatened, the Marshals Service is there to provide appropriate protection – in their chambers, at their homes with their families, and everywhere in between. The importance that the Marshals Service places on this mission cannot be overemphasized.

Threat Assessments and Investigations Against the Judicial Family

In recent years, there has been an increase in the number of threats against members of the judiciary, U.S. Attorneys, and other federal court officers. One of the key functions of the USMS Judicial Security Division (JSD) is to review, assess, and investigate inappropriate

communications or threats made against members of the federal judiciary. Inappropriate communications can be made in writing, by telephone, verbally, through a third party, or by some suspicious activity, that threaten, harass, or make ominous or unsettling overtures of an improper nature. The USMS considers all threats to be inappropriate communications, but not all inappropriate communications necessarily are threats.

While the Marshals Service provides instructions to the judiciary about how to handle these communications, each is reviewed with an equal measure of concern. A primary factor considered by the Marshals Service is the assessment of whether or not the person making the threat has the means to carry out the threat. The ability of the USMS to assess and abate threats against the judiciary is directly related to its immediate capacity to obtain information and the identity of those who issue threats to the judiciary using the Internet and other means.

Each determination about providing increased levels of security to a court officer is assessed on a case-by-case basis, and decisions regarding security are discussed with the individual who is at risk. Protective details are provided both as a precautionary measure and when a determination of a credible threat has been made. In either instance, an immediate response is the establishment of a 72-hour protective detail, during which the USMS notifies the FBI and initiates a protective investigation. Predicated on the findings of that investigation, the USMS will adjust the scope of the protective detail according to the nature of the threat in terms of human resources, deployment of technologies, duration, and scope. As in the decision to apply increased security, any decision to decrease security measures, once implemented, is discussed with the protectee. Virtually all precautionary details are maintained around-the-clock for the first 72 hours; some are continued in this manner after the initial threat investigation is completed.

In fiscal year 2004, the Marshals Service monitored and managed 39 protective details for federal judges and Assistant U.S. Attorneys as a result of inappropriate communications or potential threats. Additionally, the Marshals Service reviewed and assessed more than 700 inappropriate communications.

Courthouse and Courtroom Security

The Marshals Service's Judicial Protective Services (JPS) program within JSD has primary responsibility for ensuring the protection of the judiciary, court officers, and all who visit federal court buildings. JPS determines resource needs, and develops and enhances program operations and contract requirements for the thousands of Court Security Officers (CSOs) who are the first line of defense inside all federal courthouses and those areas of federal buildings where the court family has a dominant presence. JPS also provides day-to-day operational guidance to the United States Marshals, senior inspectors, and senior deputy marshals in each of the 94 Marshals Service district offices.

The USMS deploys more than 4,500 contracted CSOs, all with certified law enforcement experience, to more than 400 court facilities in the United States and its territories. The CSOs screen visitors and packages to detect and deter the introduction of weapons, explosives, and other prohibited items into the courthouse. In addition, these security personnel operate perimeter security barriers that are designed to protect the facility from external vehicular threats.

Coordinating with the Administrative Office of the United States Courts (AOUSC), the General Services Administration (GSA), and the Department of Homeland Security's Federal Protective Service (FPS), the USMS is involved with the planning, design, and analysis aspects associated with the construction or renovation of federal courthouses. These activities include

the acquisition and installation of electronic security systems (such as perimeter security barriers and systems, access control systems, closed circuit television surveillance, and alarm reporting systems), and the analysis and design of secured passageways not only for the judiciary, but also for prisoner movements and detention facilities within judicial facilities.

While Deputy U.S. Marshals are responsible for producing prisoners for their court appearances, depending on the type and nature of a judicial proceeding, they also may be assigned to provide security within the courtrooms. There are times when the USMS must develop special security plans for judicial proceedings that are categorized as high-risk. These proceedings generally involve international or domestic terrorists, drug kingpins, violent gang members, or organized crime figures. In some cases, the proceeding may involve a civil matter that has garnered a high degree of notoriety. In such high-risk cases, the USMS may deploy members of its Special Operations Group (SOG) or Hazard Response Unit (HRU), both of which are specially trained to transport high-risk prisoners and protected witnesses.

Coordination with the Administrative Office of the United States Courts

The USMS works closely on a day-to-day basis with the AOUSC's Office of Court Security, and the Office of Facilities and Security. In addition, the USMS regularly works with the Judicial Conference's Committee on Security and Facilities. Coordination, cooperation, and consultation occur on the national level, and on a nation-wide basis at the district level.

With regard to coordination with the AOUSC on a national level, the USMS participates in a series of meetings and working sessions in preparation for quarterly reviews led by the AOUSC's associate director. In these meetings, a wide variety of issues are discussed, such as the purchase and installation of security systems, including x-ray machines and magnetometers;

entry security packages for judicial chambers; Court Security Officer staffing; procurement and budget issues; and union and wage determination issues and lawsuits.

The USMS also works with the Judicial Conference's Committee on Security and Facilities. The committee has established semi-annual meetings, which the senior management of the USMS routinely attends. Presentations regarding USMS budget issues are formally made to the committee, legal issues are discussed, and any security issue that the committee has becomes part of the agenda. For example, working within an annual budget of approximately $300 million, each year the Marshals Service prepares a national complex budget formulation to determine the number of Court Security Officers and the types and the amount of security systems that are needed to protect the physical security of judicial facilities nation-wide. The results of the budget formulation process are presented to the judiciary, which in turns finalizes the budget request to Congress. The USMS works continuously with AOUSC and the committee throughout any given year to address issues not resolved at any of the scheduled meetings.

With regard to coordination at the local level, U.S. Marshals routinely attend scheduled Court Security Committee meetings led by the Chief Judge of the District. The U.S. Marshal is the principal coordinator of the committee, which also includes representatives from the magistrate, district, and bankruptcy courts, and also may include circuit judges and U.S. Attorneys. District-wide security issues are discussed in the meetings of the committee; security plans are reviewed and implemented; and local security issues are identified and solutions are recommended. The security topics discussed by the district committees cover a wide range of topics that are pertinent to the entire judicial family, including judges, chamber staffs, clerks, public defenders, librarians, and probation and pre-trial services, among others. Issues not

addressed locally are forwarded to the AOUSC's Office of Court Security and the U.S. Marshals Service headquarters for the determination of a coordinated resolution. Such issues may include, for example, additional CSO staffing, the need for additional security equipment between budget cycles, or legal issues affecting security.

Technical Support and Capabilities

In many cases, the USMS deploys technical countermeasures to protect persons and environments from electronic interception of official communications. Such technologies may involve, but are not limited to, conducting electronic security sweeps of federal court facilities, judicial officials' chambers, jury rooms and, in some cases, the residences of judicial officials. Also, the USMS will install electronic security systems and equipment in the residences of protectees in direct support of a protective detail.

Response to the Department of Justice Office of Inspector General Audit

In March 2004, the Department of Justice Office of Inspector General (OIG) issued a report entitled "Review of the United States Marshals Service Judicial Security Process." In that report, the OIG made recommendations to the USMS.

The USMS is on target to implement all of the OIG recommendations. Out of the six recommendations, most were related to policy updates and modifications. None of the findings of the OIG report found any instances wherein the USMS failed to provide adequate security for the judiciary.

The OIG recommendations and the implementation status are as follows:

- We have instituted rating criteria to identify, assess, and prioritize all inappropriate communications to ensure that all threats to the judiciary are assessed within established time frames. Other policy revisions may result from the Attorney General's comprehensive review of judicial security.
- We have merged our historical threat database with the Justice Detainee Information System (JDIS). JDIS includes warrant information to which all 94 district offices have electronic access.
- All Chief Deputy Marshals have updated Top Secret clearances and all 94 district offices have secure communications equipment.
- We have established an Office of Protective Intelligence (OPI) to analyze and disseminate protective intelligence related to the safety and security of the judiciary. While OPI received formal organizational approval in February 2005, the availability of resources will determine the rate of progress with regard to staffing the office.
- We have 18 Deputy Marshals working full-time on the FBI's Joint Terrorism Task Forces (JTTFs). Another 33 Deputy Marshals work part-time on the JTTFs.
- The USMS also has assigned criminal investigators to the National Counterterrorism Center, the FBI National Joint Terrorism Task Force, and the Department of Homeland Security.
- We have revised and distributed two publications to all 94 districts: *Offsite Security for United States Judges* (September 2004) and *Personal Security*

Handbook: How You and Your Family Can Minimize Risks to Personal Safety (September 2003).

- Our Judicial Security personnel offer to provide judges with security surveys of their personal residences as well as additional counseling on how to enhance their personal security.

The USMS Fugitive Apprehension Mission and Its Impact on Judicial Security

While Deputy U.S. Marshals have been arresting criminals since the Service was established in 1789, the fugitive apprehension mission was formalized in the early 1970's. Since that time, deputies have been executing arrest warrants of federal courts throughout the U.S. The fugitive apprehension mission is directly related to the successful operation of the court in the administration of justice.

Deputies assigned the duties of warrant execution are not taken away from court security responsibilities. In many districts, these deputies are specifically assigned the warrant execution function. During special warrant execution initiatives (such as the recently-completed **Operation FALCON**), the deputies assigned court security functions perform this warrant execution function after court operations are concluded or on weekends.

The Chicago and Atlanta Incidents

While the judicial protection mission of the USMS was not directly connected to either the tragic events surrounding the murder of the mother and husband of Judge Lefkow, or the equally disturbing courtroom murder of Judge Barnes, the Marshals Service responded immediately in both incidents. In Chicago, the USMS responded within hours by providing a 24-hour protection detail for the Judge, her four daughters, and step-daughter. In addition, the

Marshals Service established four other protective details on three circuit court judges and one district court judge, based upon threat information that was received. As of this date, two of these judges remain under protection due to possible threats.

Concurrent with the establishment of the protection details, our USMS Great Lakes Regional Fugitive Task Force, in conjunction with the Chicago Police Department and the FBI, established a 24-hour investigative team to track down the person responsible for this heinous act. A 24-hour investigative command post was set up and staffed with deputy marshals and members of the law enforcement community. During the investigation, the Marshals Service utilized our resources by:

- Obtaining and analyzing telephonic records from the Judge's residence;
- Obtaining several dozen court orders for telephonic, location, routing data, and subscriber information;
- Providing tactical communications for security details of several members of the judiciary;
- Providing covert video surveillance;
- Conducting interviews of suspects; and,
- Conducting surveillances of suspects.

On March 9, 2005, we received information that Bart Ross was stopped by police in West Allis, Wisconsin, for a traffic violation and subsequently committed suicide via a gunshot wound to the head. Marshals Service personnel were deployed to the scene and secured and reviewed the evidence. As we know now, a search of Ross' home in Chicago resulted in a significant amount of physical evidence linking him to the death of Judge Lefkow's family.

Likewise, within hours of the courtroom attack in Atlanta, the USMS Southeast Regional Fugitive Task Force (SERFTF) was deployed to assist local law enforcement in its investigation and pursuit of Brian Nichols. Together with deputy U.S. Marshals from the Northern District of Georgia, the Task Force assisted the Fulton County Sheriff's Office at the crime scene and manned the Fulton County Emergency Operations command center. The USMS Technical Operations Group (TOG) was designated to handle all electronic surveillance measures relating to the search for Brian Nichols and SERFTF investigators were deployed from both the Atlanta and Macon offices to assist with interviews and surveillance.

Judicial Security Review Working Group

The rule of law depends on judicial officers being free to issue decisions based solely on the law. Judges and other participants in the judicial process, including prosecutors, defense counsel, witnesses, and court staff, must be and feel secure in their ability to uphold the law. It is unacceptable to our nation that participants in the process fear for their safety on account of their participation in the process. The Department of Justice, as both a litigant and law enforcement agency, takes its responsibilities to ensure the security of the judicial process with the utmost seriousness of purpose and commitment.

In the wake of the murders of Judge Lefkow's husband and mother and the shooting in the Fulton County, Georgia, courthouse, the Attorney General established a Judicial Security Review Group within the Department of Justice and directed this group to report back to him by the end of May outlining a set of best practices for judicial security and a set of recommendations the group may choose to submit. The review group's membership includes representatives from the Marshals Service, the Bureau of Prisons, the FBI, a United States

Attorney, and the Department's Criminal Division, Office of Legal Policy, Office of Legislative Affairs, and Office of the Deputy Attorney General.

While the review group is composed of Justice Department components, we recognize that it must work closely with the judiciary on issues of judicial security. Further, we understand that the review group's chairman has met with representatives of the Judicial Conference and the AOUSC, and that the initial meeting (after its organizational meeting) of the full review group was with representatives of both entities. While the work of the review group is ongoing, the expectation is that it will conclude its discussion and report back to the Attorney General within the established time frame.

In addition to the Attorney General's creation of the internal review group, the Office of Justice Programs has provided funding of $100,000 to the National Center for State Courts, which is leading a study of judicial security in state and local courts. Together, the Department expects that these two initiatives will result in improved judicial security at the federal, state, and local levels.

Conclusion

In summary, Mr. Chairman and members of the subcommittee, the Marshals Service takes the security of our judges and federal courthouses very seriously because we know that we are protecting not merely a person or a building, but ultimately America's right to equal justice under the law. We are fully committed to fulfilling this mission and meeting the challenges that we face now and in the future.

Mr. COBLE. Thank you, Dean. We will start our questions now. And we impose the 5-minute rule against us, as well, so we'll be ever mindful of the red light.

Let me say this, in view of something Mr. Scott said earlier, folks. During the questioning, if at any time you feel that responding—this is an open forum, after all. If you feel responding would in any way compromise your safety, we can attend to that subsequently. Hopefully, that won't happen. But start my 5 minutes, if you will, now.

Mr. McNulty, given the Supreme Court's decision in *Booker Fanfan,* making the Federal sentencing guidelines advisory, what impact, if any, does that decision have upon mandatory minimums?

Mr. MCNULTY. Well, I think that mandatory minimums were already an important tool, among many tools that Federal prosecutors have, for getting cooperation of witnesses; but after that decision, I think it makes that tool even more valuable. Because now, if you are working with an individual who's going to provide cooperation in an investigation and you calculate the sentence under the guidelines, there's no guarantee that the judge will actually impose that sentence. There'll be—the judge is free to depart from the range and sentence really at any level.

Mandatory minimums provide a limit on where that sentence could go. And so I think that we are beginning to see how those cases that involve mandatory minimums—and that's certainly a sub-set of all of the cases and all of the types of cooperation we see—are especially important to us. So I do think that they've taken on even more significance after *Booker Fanfan.*

Mr. COBLE. Thank you. Mr. Chabot, I think, has a question to put to Judge Roth, so I will—let me talk to you for a minute, Marshal Clark, consistent with some of Judge Roth's testimony. Describe for us, if you will, the resources and any changes in resources that have occurred in the last few years in your district regarding personnel, generally.

Mr. CLARK. Sure. I currently have an onboard staffing level of 54 full-time employees. And to highlight how slow the resource growth has been within the Marshals Service, when I reported to the district in 1997 as a chief deputy, our full-time employee ceiling was at 48. So in that length of time, we have seen a very slight growth.

Another example I like to use sometimes to highlight the resource issue is that I did have the privilege to serve as a deputy marshal in the Richmond office during the mid-1980's, where we had one supervisor and seven deputy marshals. Today, we have one supervisor and eight deputy marshals. So from the mid-'80's to current, that's, again, a very slow growth, I might say.

So resources, while we are able to use them to the fullest extent possible, that I am pleased to say, there are times when we do struggle as an agency to provide and meet all of the resource requirements that sometimes are placed upon us.

For example, additionally within the Eastern District of Virginia, we often employ outside resources, such as off-duty sheriff deputies or police officers, to help us handle prisoners; for example, within the cell block. Last year, within our district we spent approximately $200,000 to pay for such part-time help. So overall, the resource issue is sometimes demanding upon us.

Mr. COBLE. Thank you, Marshal. Let me put another question to you, Marshal. I am told that the rule varies from district to district and State to State, but FBI agents, DEA agents, oftentimes are required to surrender their firearm prior to entering a courtroom. It seems to me that that would—well, strike that. Let me say it a different way.

I believe if these agents, thoroughly trained in firearm safety and proficiency, were allowed to retain their firearms, that might well be a plus, it seems to me. If the outbreak that occurred in Atlanta, for example, if you had an FBI agent or a DEA agent along with the Marshals Service in the courtroom, fully armed, that would be a far better scenario, it seems to me, than to have an FBI agent unarmed. What do you say to that?

Mr. CLARK. Mr. Chairman, that's an interesting question. And across the country, you're right, there are districts that do not allow—such as in the Eastern District of Virginia; we do not allow law enforcement officers—agents, if you will—to come into the courthouse with a weapon. And we certainly make no judgment upon their ability, their capability, to safely use that weapon. However, within the courthouse itself, from the Marshals Service perspective, we like to know who is armed and who is not; particularly in a courtroom setting.

And so often we find that agents, particularly Federal agents who are in the courthouse representing or participating in the prosecution of their case, sometimes are not dressed in coat and tie. Or even if they are, we as an agency may not know that they are agents. And therefore, we often have essentially an identity situation, of knowing who is friendly to us, and who is not. So that's one part of the process.

Another part is in, often, cases such as in Eastern Virginia, the judges themselves have requested that just the marshals in our court security staff have firearms available to them.

Mr. COBLE. My time has expired. The gentleman from Virginia.

Mr. SCOTT. Thank you very much. Judge Roth, you indicated that you support section 13 of the bill. How would the difference in the procedure help court security?

Judge ROTH. Well, I have described the frustration of the——

Mr. COBLE. Judge, a little closer to the mike, if you will.

Judge ROTH. I'm sorry. I have described the frustration of the courts in trying to obtain from the Marshals Service exactly what staffing patterns are needed of deputy marshals in a court to provide adequate security; and also, whether those staffing patterns are being met. I think, with the consultation and coordination between the Director of the Marshals Service and the Director of the Administrative Office of the Courts, we could determine appropriate staffing levels for court security in every district, and we could make sure that those staffing patterns are being met.

We receive information from marshals around the country about staffing shortages that they currently have. This is confidential information. I don't want to give it to you, because the people who gave us the information can get in trouble. But there are some serious shortages, including inadequate staffing in the cell blocks—one deputy marshal being in charge of a cell block containing 30 or more prisoners—inadequate day-to-day staffing in the courts. And

we feel that section 13 is important to make sure that we do have adequate staffing patterns, and that there are sufficient deputies to fill the required slots.

Mr. SCOTT. Now, is section 13 enough? Because you still—wouldn't you still have the bifurcated commitment to not only the Department of Justice law enforcement, but also to the Judicial Branch court security?

Judge ROTH. I think the bifurcation of responsibilities in the Marshals Service is very serious. We would hope that, with the passage of section 13, we could participate with the Department of Justice in getting adequate funding for the Marshals Service.

We realize that the Department of Justice must go through OMB to get their funding, and sometimes that is cut down. Nevertheless, the judiciary has been responsible for getting increased funding for a number of functions of the Marshals Service, including the JSIs, the Judicial Security Inspectors, for every district. And we feel that if we were on top of the information, we could help them get the funding that they do need.

Mr. SCOTT. Thank you. Mr. McNulty, do you support section 13?

Mr. MCNULTY. I don't have a position on that. The Department of Justice hasn't taken a position on this bill, and so I can't give you any response today.

Mr. SCOTT. Okay. Marshal Clark, Mr. McNulty mentioned the courthouses in Richmond and Newport News, both of which are being constructed. Has the Marshals Service been involved in making sure that the construction is done in such a way that security can be enhanced?

Mr. CLARK. Yes, we most certainly are. We are involved at every level of the—I would say, the construction phase; particularly in conjunction with my headquarters, we work out all of our space requirements, our security requirements, issues regarding our cell block, prisoner handling. All of that is worked completely through with members of our headquarters staff for the security, necessary security.

Mr. SCOTT. Several have mentioned the funding and the staffing. Can somebody indicate to me where this money—is there money in the bill for additional staffing and additional grants for security?

Judge ROTH. Mr. Scott, there is $12 million in the bill which would be dedicated primarily toward off-site security for judges. I think there is more that is needed for an overall review—oh, I'm sorry, it's in the supplemental. There is need for an overall review of staffing needs and further requests.

Mr. SCOTT. Okay. But the bill does not have that funding? The 12 million—there's money in there for witness protection, but I didn't see anything for—sorry?

[Discussion off the record.]

Mr. SCOTT. Grants to the States? Mr. Chairman, the gentleman from New York, Mr. Weiner, asked me to pose the question about the appointment process; whether or not we ought to continue to use the patronage system for appointments of marshals, rather than a system that would be based more directly on qualifications. Should the system be changed? The bill has the appointment change from the President to the Attorney General. Is that a good

idea? And will that enhance the possibility, or probability, that merit will be the criteria, rather than partisan politics?

Mr. CLARK. Mr. Scott, we certainly have across the Nation some very qualified and very well trained marshals that have been appointed throughout the country. However, as a career employee, I have probably the unique ability to look on sort of both sides of the fence. I am an appointed position; however, I'm also a career individual.

And so, it would make sense on the one hand to have individuals with a career background to assume these positions, such as the special agents in charge of various other Federal law enforcement agencies. However, the system as it has been since 1789 is a tough one to change, as we know.

So with regard to the provision to strike that and have the appointments made by the Attorney General, I certainly wouldn't oppose it, and would think that with all measures of fairness we could find qualified applicants for the position of marshal.

Mr. MCNULTY. Mr. Scott, I might point out that when I was working with the Subcommittee that bill was passed by this Subcommittee twice in the 1990's. It passed once on the House floor on suspension, and died in the Senate. The second time, it actually lost on the House floor on a suspension vote, after extensive opposition by sheriffs and others in the country who wanted to continue to have those positions available to them.

Mr. SCOTT. And Mr. Chairman, if I could just pose a question, and I don't need an answer now. But the gentleman from New York has apparently sent a letter to the Marshals Service regarding a decision in staffing in the New York area, and hasn't received an answer yet. So if Mr. McNulty can see that a response comes to that letter. I think it's from a judge in the Eastern District of New York. We'll get you the details of that, so you can respond.

Mr. MCNULTY. Okay.

Mr. COBLE. The gentleman's time has expired. In order of appearance, the gentleman from Texas, Mr. Gohmert, is recognized.

Mr. GOHMERT. Thank you, Mr. Chairman. I do appreciate this important hearing and your calling it; appreciate the prompt treatment of this bill. As a bit of a response to some of the things that were said early on in the opening statements, in this society it is important to have disagreement. It's important to have criticism. But when it comes to our justice system, the delineation between criticism and disagreement should stop clearly—a big line of demarcation between criticism, disagreement, and threats of violence or violence against those who are participating.

So I see the justice system as what should be the last bastion of civility in our society; that as long as we have a civilized society, the courts ought to be protected all the way around, be the last place where people can come together, take turns in stating their position, putting on evidence, making arguments, and come to a civilized conclusion. And that is why I think it is so important to protect the system.

When I hear the term "draconian" used on some of these things in the bill, what I see as draconian is having a justice system in a civilized society where we do not make extremely severe penalties for disrupting that civilized system and making clear to everyone

that we will protect the system because that is what a civilized society will do. Otherwise, we fall into the realm of a Third World nation, where these type things occur all the time.

Judge Kent, thank you, my friend, for being here. You have mentioned a number of things in your opening statements. One of the things addressed—and this is, Judge Roth, in talking with you earlier—about fictitious liens. A lot of people haven't heard about that. But there are fictitious liens that have been filed against judges. Judge Kent, are you familiar with that personally?

Judge KENT. Well, I know in Texas we have a group, the Republic of Texas, who doesn't believe Texas is a State, and they believe that they're an independent republic. And they have their own court system set up. And they issue judgments and place liens, and try to record those liens in the legitimate system there in Texas. And that's caused a lot of judges a great deal of trouble, with respect to their credit and financial status, because of these fictitious liens and judgments that are attempted to be filed against them. So I think that's an issue. And probably, the Federal judiciary faces it, also.

Mr. GOHMERT. And of course, Judge Kent, you mentioned threats to you. And of course, all of us that have been judges—or I guess most of us—have had threats. And often times, as you've indicated, it is from people who are incarcerated at the time. And that does seem to be a problem.

You were in the meeting we had with the Federal judges and other U.S. Marshal, other law enforcement officials, recently. Are you aware of there being an ongoing problem with people behind bars, like in State facilities, threatening judges?

Judge KENT. I am personally aware of this situation. And certainly, I appreciate the remarks earlier about not going into specifics with respect to that; let law enforcement do their job. However, that is the situation, particularly with gangs. There's a growing group of prison gangs, and having connections on the outside with street gangs, that are involved in that type of intimidation and threats.

And I know, you know, what we do in court, as the simple country judge, truly, that I am—I'm awed to be here today—you know, is to listen attentively, determine the facts of the case, apply the law as the legislature and the Constitution set it out. It is not our job to get threatened. It is not our job to have to deal with that as judges. And so we rely on law enforcement to help protect us. And we're hopeful that Congress and the State legislatures will help us with that, to deal with the prison gangs and deal with those threats with aggressive prosecution of those individuals.

Mr. GOHMERT. We have had situations where people behind bars in State prison thought it would be more attractive to be in a Federal penitentiary. And so, they threaten judges, Federal officials, hoping they'd get transferred.

You're aware, I would take it, that in this bill it proposes stacking any additional threat, or sentence as a result of a threat, on top of any State penalty. I thought one of the suggestions by a Federal judge back in Tyler was interesting—well, I see my time's out. But that was to put warnings in State facilities that it won't help you get transferred to a Federal facility if you threaten or plot

against a judge. It will be stacked, and you won't start doing that time until you finish your State time.

My question was going to be if you thought that would be helpful.

Judge KENT. And I'm the personal beneficiary of that help. I recently had one of the other threats, and the gentleman was prosecuted in the Federal courts because he used the mail to send the threat. And the Federal judge did stack the sentence. And I think that sent a strong message. An amazing thing happened: from that penitentiary unit, which I had received several threats from, they've stopped from that unit. So maybe the message got out.

Mr. GOHMERT. Thanks, Judge Kent.

Thank you, Mr. Chairman.

Mr. COBLE. The gentleman's time has expired.

The gentleman from Massachusetts.

Mr. DELAHUNT. Thank you, Mr. Chairman. And just to make an observation, Mr. Chairman, about your comment about arming of DEA agents and other law enforcement officials in the courtroom, recently we had a tragedy in the State of Rhode Island—I come from New England—where a local police detective had his weapon, his handgun, taken from him, and he was killed by a defendant.

So I think, if I hear the marshal correctly—and you can tell me if I'm misinterpreting you—that sometimes those decisions are best left to the individuals in charge of security in a particular courthouse.

Mr. CLARK. I would certainly agree with that; that it is often best left to the individual courts. For example, I should clarify further that in the Eastern District of Virginia, for example, we already have worked out with our local law enforcement first responders that, obviously, if there is an emergency within the courthouse or some type of an incident, that any first responders, obviously, would be allowed to come and go from the court. And it is also difficult sometimes, in working through the policies with the judges themselves.

Mr. DELAHUNT. Right. And it clearly has to be coordinated between the court, the service. And some sort of an accounting has to be made for whom is permitted to carry a firearm in the courthouse. But again, I would suggest this is not something that we should rush into, in terms of taking action here.

But I want to get to the testimony of Judge Roth, and congratulate you for your candor.

Judge ROTH. Thank you.

Mr. DELAHUNT. We often hear, or we heard recently about Congress holding judges accountable. I think what you have effectively done here today is challenged us to be accountable. Because I think we all share as a goal the protection of the judiciary. Clearly, without an independent judiciary in this country, one that is not susceptible to influence of any sort, our viable, healthy democracy will erode. So you have been very candid and very frank in your testimony. It's refreshing. I suspect that you are a person that tends to be very frank and candid under any circumstances.

But I think it's important that we read the testimony of Judge Roth. Again, to emphasize it and underscore it, "It seems to my Committee that the Marshals Service never gets the resources it

needs to get the job done. The Executive Branch consistently recommends slashing funds before the requests even make their way to Congress...Some people believe that the Department of Justice will never support full resource levels for the Marshals Service, in spite of any Department of Justice statements to the contrary. Therefore, I am seeking your assistance in helping to protect the Federal judiciary in several ways."

You then further state, "The Department refuses to share any information about Marshals Service staffing levels and formulas, or to consider suggestions or change with us." Let me be really clear. The Judicial Conference has never—at least, in your experience—consulted with the Director of the Marshals Service about a needs assessment for security for judges. Is that what I can interpret?

Judge ROTH. We have asked for that information. We have not obtained it. We feel——

Mr. DELAHUNT. Well, you know, I'll tell you something, Mr. Chairman. I think that is unconscionable.

And I think you indicated earlier that you were—you noticed that the Director of the Marshals Service was not here today.

Judge ROTH. Right.

Mr. DELAHUNT. And I'm sure—Mr. Clark, I'm sure you are a career employee that performs your service well. But this just doesn't stand. This is indeed something that I cannot—I just can't imagine. You shock me with your testimony.

And I would hope that the gentleman from Texas would consider an amendment when the time comes, if this bill does go to markup, an amendment that would mandate not just simply consultation—and maybe I should ask for the opinion of Mr. McNulty, since he's here representing the Executive Branch—mandate a needs assessment for the entire Federal judiciary, in a report to Congress, a report to this Judiciary Committee, to ensure that that plan is implemented, both with funding and the resources necessary. Otherwise, we're just sitting here, wasting our time.

Judge ROTH. We would support——

Mr. DELAHUNT. It starts with that.

Judge ROTH. We would support such an effort wholeheartedly, enthusiastically.

Mr. DELAHUNT. Mr. McNulty, what's the position of the Executive Branch?

Mr. MCNULTY. Well, I can't give you the position of the Executive Branch.

Mr. DELAHUNT. Well, what's your position, Mr. McNulty?

Mr. MCNULTY. Right, as the U.S. Attorney in Virginia. But from my limited perspective of what I've observed—and by the way, I appreciate very much what you're saying, and I think you've raised a very important point.

I know that Attorney General Gonzales has been working closely with the judiciary in the last—since he's been in office, in the last 2 months. I think they've had a number of meetings with the conference on this subject. I think he has established a working group within the Department to see how we can better provide security to the judiciary. So this is a subject that I know he cares about deeply.

Mr. DELAHUNT. Well, that's very good news. And would you please convey back to the Attorney General my remarks and my observations? And I would hope, okay, that the Department would support an amendment to the bill filed by Mr. Weiner and our freshman Member of the judiciary, former Judge Gohmert; because I just think that is intolerable, particularly given what we have seen occurred.

We don't even have a needs assessment. This isn't even about providing the necessary resources. We're operating in the dark here. And look what's happened. And what are we going to do? Just simply sit around and pass mandatory sentences, and think that that's going to deter and protect these men and women who sit up on that bench?

Mr. GOHMERT. Will the gentleman yield?

Mr. DELAHUNT. I yield.

Mr. GOHMERT. Mr. Delahunt, I appreciate your comments. And that's why we added section 13 in here. Maybe it does need to go forward—I mean further than it does.

Mr. DELAHUNT. I want a report back to this Committee.

Mr. GOHMERT. But I was very concerned when I found from Federal judges that there was no consultation there, or not adequate. And I thought that was abysmal. And that's why 13 is there. If it needs to go farther, then I'm open to do what we need to.

Mr. DELAHUNT. If the Chair would indulge me for an additional 30 seconds, I would suggest strongly, as the principal sponsor of this legislation, that written within section 113 [sic]—and I'd be happy to work with the gentleman—that we mandate a report to the Congress, to ensure the implementation of a safety plan for Federal judges.

And we can do it on an annual basis. We could work out the details to that effect. But there's got to be an accountability here, that clearly is lacking.

Mr. COBLE. I thank the gentleman. I was going to say to the gentleman from Texas, I believe yours and Mr. Weiner's bill at least addresses in part some of Mr. Delahunt's concerns. And perhaps you all can get together subsequently to that end.

The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. I want to first apologize to the panel for not having been here at the beginning of the testimony. I will review all the testimony that we have in writing. I was participating in a news conference on a bill that's going to be coming before the House this week, CIANA [ph], which passed through the Judiciary Committee and through my Subcommittee, the Subcommittee on the Constitution. So I want to apologize for that.

Now, I might have missed the Chairman saying this, so if I'm repeating I apologize to him for doing that. But I wanted to congratulate Mr. McNulty for his new position. And I can just say that when he was a staff member of the Judiciary Committee he did a tremendous job, through some difficult times, as he may recall; some that were very national issues and very divisive issues, and that we're still fighting about up here sometimes.

Mr. COBLE. Will the gentleman suspend?

Mr. CHABOT. I'll yield, yes.

Mr. COBLE. In order to suck up to the U.S. Attorney, I, too, want to congratulate. [Laughter.]

I failed to do that.

Mr. MCNULTY. The bottom of my district does touch North Carolina, so that's good.

Mr. CHABOT. Anybody else want to suck up here, while we're at it?

But really, you did a wonderful job for us then, and I'm sure you're going to do a tremendous job in this new position. So congratulations. It couldn't have gone to a better person.

My question is to Judge Roth and to Mr. Clark here. And let me preface this by saying that I represent Cincinnati. And the Chief Judge of the Federal District Court there for the Southern District of Ohio is Sandra Beckwith, who I've known for many years. She was a judge in Hamilton County, both at the municipal level and then the common pleas level. And then she went to the—became a county commissioner there. And she and I served on the county commission for four or five years together. So I've known her very well. And we've kept in touch on a number of these issues relative to the courts, and that's been a great help to me, and I think to her as well.

But Judge Beckwith has indicated her concern about the security in and around the Federal courthouse in Cincinnati. The General Marshal Service issued an RWA approval to the GSA in the amount of $278,000, to begin the project in August 2000. Subsequently, an RWA in the amount of $150,000 was issued to complete the project.

However, GSA and the Marshals Service determined that an extra $230,000 was needed to cover the entire cost. And it was expected that the security system would be funded, approved, and built by this year, by 2005. The RWA will expire in August, and the original funds may not be available to them. And so that's just to give you a little background on the security issue that we've been working with there for some time.

And Judge Roth, in your testimony you referred to what you consider the lack of proper coordination and consultation between the U.S. Marshals and the Judicial Conference with respect to resource allocation and security needs. Mr. Clark, for the U.S. Marshals office, paints a somewhat different picture.

Now, maybe what we have is, you know, a difference in perceptions to some degree. But I would ask both you, Judge Roth, and you, Marshal Clark, to each address the coordination and information sharing issue. How much already occurs, and what, if anything, needs to be done to improve the coordination and consultation between the Judicial Conference and the marshals?

Now, the bill includes language aimed at ensuring such coordination and consultation between the Administrative Office of the U.S. Courts and the Marshals Service. If enacted, how do you envision the process would work? And what specific changes do you believe will occur, or should occur? And either one of you is free to go first on that. Judge Roth?

Judge ROTH. If I could begin, let me say first of all we are very aware of the problem you speak of in Cincinnati. That has been—is being worked on, and will be solved within the next 10 days.

Mr. CHABOT. Great. Thank you very much.

Judge ROTH. So Judge Beckwith, I think, will be relieved with that resolution.

The installation of security equipment in courthouses, there has been very good coordination between the Marshals Service and the courts on that instance. And that is not what we're concerned about in the consultation. The requests for security equipment upgrades in existing courthouses and new courthouses is worked out between the Marshals Service and the Administrative Office of the Courts, and is approved by my Committee in our budget requests every year.

Our real concern is about the staffing of the Marshals Service. What is needed in a given district is deputy United States marshals to provide adequate court security in that district? How is that formula established? What does that formula call for? And is that formula being met?

That is what we are primarily concerned about. That is what we would see in the terms "consult" and "coordinate." And we would hope that that consulting and coordination, as I mentioned, would then lead to the adequate funding to staff the protection necessary for each of the districts.

Mr. CHABOT. Okay. Thank you very much, Judge. Marshal Clark?

Mr. CLARK. Congressman Chabot, within the Eastern District of Virginia, I do coordinate frequently with two members that are on the Judicial Facilities and Security Committee. We have Judge Henry Hudson, who serves in our Richmond office, and Judge Henry Morgan, who serves in the Norfolk division.

And so I do from time to time get a chance to talk to them about some of the issues that are both local in scope and national in scope. And they frequently—particularly Judge Hudson—will call me to seek my advice or my input on some of the issues that are before the Committee.

I would certainly agree with Judge Roth that wherever we can collectively share information, determine what works best in terms of staffing levels, from a local perspective I would certainly support that.

Mr. CHABOT. Okay. Thank you very much. Thank you, Mr. Chairman.

Mr. COBLE. I thank the Chairman.

I have a couple of brief questions. We'll have sort of a modified second round here. Judge Roth, I know you're the chairwoman related to security, so let me ask you about witness intimidation. How significant a problem is it in the Federal courts? And have you seen an increase or a decrease in recent months?

Judge ROTH. That is not really a topic that is within the jurisdiction of my Committee. I will be very happy to get—compile that information and get it to you for the record.

Mr. COBLE. If you would do that, I would appreciate—I'd be interested to know that.

Judge Kent, you mentioned in your testimony a current threat imposed against another judge in Texas. Can you describe the nature of the threat and the security measures, if any, that were taken? Or if you can't do that, I understand that.

Judge KENT. Well, as I, and as the minority Member, said, to keep our remarks with respect to security issues maybe close to the vest. But there are specific threats that are made at a number of judges. We had one in our area, you know, outside of myself, other judges, that are extremely serious threats.

We have in the past—I have to compliment the FBI, because the FBI has been very aggressive in helping when there are threats that involve even State judicial members, to help in the investigation of that; along with the Texas Rangers and local law enforcement.

But it is important—and you asked about witnesses—those threats against judges and witnesses, that there is aggressive attention to that. Witnesses have—and particularly after our courthouse shooting that you saw, we had witnesses saying they were not going to come and testify. And the district attorney's office had to really talk with them and explain to them how we were going to keep them safe through added security members in our courthouse, before they would even come to court and testify on misdemeanor cases that were set for trial. Jurors that said they were not going to come and serve as jurors because of what they perceived, the lack of security.

So some of the recommendations by the National Center for State Courts, I think, are excellent, where there can be some help to the State courts in these security issues.

Mr. COBLE. So I take it, Your Honor, you would favor assistance to States in developing witness protection programs?

Judge KENT. Absolutely. I think it would help with the witness protection programs, and I think there are some other recommendations that could help with general security measures for State courts.

Mr. COBLE. I thank you.

The gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. Does witness protection—does that include protecting witnesses in addition to the witness protection plan that we see where they disappear, get a new identity? Are there other witness protections that need to be funded?

Judge KENT. I think probably these gentlemen would know better than I.

Mr. MCNULTY. Well, there are different ways to secure the safety of witnesses. On a short-term basis, there are safehouses. And my experience, the investigative agency—let's take the FBI, for example—will take responsibility for securing the safety of a witness on a short-term basis. Perhaps it's over the course of a weekend, or just in a period of time preceding trial.

Mr. SCOTT. And that takes funding.

Mr. MCNULTY. That takes some funding, though limited funding. And we have run into some recent issues, because of budget cutbacks, on that score.

What the Marshals Service, of course, does is, if those witnesses really are going to be facing severe threats over a long time, then these investigative agencies essentially nominate someone for the witness protection program. They sponsor them. And the Marshals Service gives them a new identity and puts them into the full program.

You really have to—and I'll speak for John Clark for a moment. You really have to decide, though, up front, are you going to do it or not. Because halfway measures create more problems.

Mr. SCOTT. A lot of the bill adds, as we have pointed out, mandatory minimums. Are there changes in actually definitions of criminal law that are in the bill, or is it just mostly the increased penalty? Are there any things that are in the bill that would be illegal that are not legal now—that are not illegal now, that would be illegal under the legislation?

Mr. MCNULTY. I think it does expand Federal jurisdiction in some places. I'm not an expert on the legislation. I looked it over quickly. But as I looked it over, I thought there were some places where there were provisions that expanded Federal jurisdiction; particularly in relation to law enforcement officers at the local level and potential Federal prosecutions involving acts of violence against——

Mr. SCOTT. I know, but all of these would have been illegal under every State law.

Mr. MCNULTY. Oh, creating—you mean proscribing conduct that's not prohibited anywhere?

Mr. SCOTT. Right.

Mr. MCNULTY. I'm not—I have not——

Mr. SCOTT. You don't think so?

Mr. MCNULTY. Didn't see anything like that. And I wouldn't know for sure, because you have to compare it to State law.

Mr. SCOTT. Well, you know, we've kind of talked about this. It just seems to some of us that increasing a penalty for things that are already illegal isn't going to have a big effect on people's behavior. I mean, a guy that shot—what?—three, four people, and then died in a shoot-out, isn't going to be deterred by a mandatory minimum sentence.

And if we're not proscribing anything that's not now illegal—there are a couple of things in here, the Internet, the judges' financial disclosure statements, some others, that I think are technical, that I think we could probably work with.

There's going to be a problem with the Internet because how you can control—we've had other pieces of legislation that have pointed out how difficult it is to regulate the Internet, because it is an international phenomenon, and the server may be about anywhere, and everybody that has access to the Internet has access to that. And the Department of Justice can't really do much for a server that's physically situated outside of the country.

With that, Mr. Chairman, I'll yield back.

Mr. COBLE. I thank the gentleman.

The gentleman from Texas.

Mr. GOHMERT. Thank you, Mr. Chairman. One comment I would like to address, too, though. I constantly hear people who are against death penalties being imposed make the comment there's no effect on murder. And I would concede that where you take 20 years to implement the capital punishment it's not much deterrent. Having been appointed back in the '80's to represent a capital murder defendant who was convicted, and having done an excellent job on his behalf, I'm quite familiar with how that all works. But these things are a deterrent.

And when you mentioned someone who was killed in the process after shooting three or four people not being deterred by enhanced penalties, I would point out to the witnesses, to my colleagues in Congress, this man went to the trouble of putting on body armor. He was thinking about his own well-being after killing these other people. And if he will go to the extent to put on body armor, thinking about his own well-being, then the thought process would also extend to, "What's going to happen to me if I'm caught?" So I think it can have a deterrent effect. And that's why we're pushing forward.

A couple of other areas I wanted to touch on. Tax credit for State judges was mentioned; and also had it mentioned by a Federal judge that, gosh, if we're not going to give them the support, the finances, to have off-site security for their cars, their homes, at least give them a tax credit. And I'm all for that, and don't mind pushing a bill to that effect.

We'd need to do that separately, because our friend, Chairman Thomas, would probably want to have something to say about that. But that would be separate from this bill, and that's something that still might be possible. Mandatory minimums, I think we do owe it to the judges, the AUSA that was mentioned. They deserve to have home protection, and we need to do what we can to help them.

The witness program, I'd point Members to that; that witness protection grant money being available in the bill.

Also, there was mention earlier about writs. I do believe justice delayed is justice denied. And this does make a provision for moving writs along. And I would direct my dear friends and colleagues to the fact that, for example, the Ninth Circuit is known for taking writs and sitting on them, and sitting on them, and sitting on them, and sitting on them. And sometimes, giving people, especially attorneys, deadlines—even judges—is extremely helpful. So that's why we wanted that to be a part of the bill, as well.

I would like—you know, you've made statements, each of the four of you. In the time I've got left, I would really—since this is not a markup, I'd like your input. You've heard questions. You've heard each other testify. Starting with Judge Roth, is there anything else that you would like us to consider, or have in mind, or perhaps supplement in this bill?

Judge ROTH. I think the section 13, which we have discussed extensively. I would like to point out that there are other aspects of that that concern me; not just the staffing pattern but, for instance, the Office of Protective Intelligence at the Marshals Service. Our understanding is this is a new office. It has only three people. We are concerned whether that office is going to take the proactive role necessary in coordination with the other law enforcement agencies to determine what the threats are to judges.

We have been concerned that the Marshals Service does not think there's a threat unless a judge receives a letter or someone says, "I'm going to do you harm." And we think—we believe that there must be a greater proactive activity by the Marshals Service in their protective intelligence, to determine where threats may exist and what may be done in order to protect the courts from

those threats. And we feel that the consultation and coordination should extend into that area.

Mr. GOHMERT. Okay. Thank you, Judge.

Judge KENT. Congressman Gohmert—Judge Gohmert—other than my recommendations about being able to carry my gun outside of Texas, to create a small set-aside of Homeland Security funding to assist the State courts in meeting the requirements of the USA PATRIOT Act. That can provide additional security needs for State courts. So to look at the ways that Congress can perhaps assess and help State courts in their security needs.

Mr. GOHMERT. Okay. Thank you, Judge. Mr. McNulty?

Mr. MCNULTY. Well, I would defer to the President's budget request for the Marshals Service. But I have to say that this Committee, apart from this legislation, may want to work closely with the Appropriations Committee, to look at the adequacy of resources.

The Marshals Service does a tremendous amount of good with the limited resources they have. And when Marshal Clark was describing the lack of growth in his office, I was struck by how that compares to the growth of prosecutors in my office, the number of detainees. Since I've been U.S. Attorney for three and a half years, I think we went from a population of about 500 people being detained on a given day, pre-trial, to—what?—800 now, right, John?

Mr. CLARK. That's correct, if you look at the workload measures over the last few years, compared to, perhaps, staffing increases that other agencies have received. And certainly, the Marshals Service—and I'm speaking, again, from the Eastern District of Virginia; where, again, when I was a deputy marshal in Richmond in the mid-'80's, you practically knew all the prisoners by name. I mean, they were—there were not too many. And now, just in a place like Richmond, we're seeing the population approaching 300.

So to not have the growth level to keep up with the workload demands is certainly, and can be, a burden. So I would certainly support—while the President's budget has been helpful, I would also say that anything the Committee can do to help us there would be appreciated.

Mr. GOHMERT. Thank you.

Mr. COBLE. I thank the gentleman. We're pleased to have the gentlelady from Texas joining us. Good to see you, Ms. Jackson Lee.

I'm going to ask the gentleman from Texas if he will assume the Chair. I have got North Carolina constituents who are waiting to bark at me. And as I depart, I want to thank the panel for your time and your contribution today. And I want to thank those in the audience for having stayed around until the last dog has been hanged. I think this has been a good hearing. And we will revisit it again.

Mr. Gohmert. See you later.

Mr. GOHMERT [presiding]. Thank you, Mr. Chairman.

At this time, the gentlelady from Texas.

Ms. JACKSON LEE. I yield to Mr. Delahunt. I will follow him.

Mr. GOHMERT. Very well.

Mr. DELAHUNT. Yes, thank you, Mr. Chairman. Just a few questions for Judge Kent. And thank you for your testimony. I'm sure

that was a very difficult experience. What has been the response—obviously, we're a Nation that embraces the principal of federalism. And there are clear responsibilities on the part of the State government. What has been the response of the Texas legislature to these security issues? If you could, give it just maybe a minute.

Judge KENT. Yes. I think that the Texas legislature certainly is involved with a number of the issues that they're trying to deal with in a short time. They meet a very short time every 2 years.

Mr. DELAHUNT. Have they—excuse me. I'm going to interrupt you, because the time is moving.

Judge KENT. Yes.

Mr. DELAHUNT. Have they done anything at all, in terms of providing you the adequate resources?

Judge KENT. The only thing that they have done in the past dealing with the lien situation is they've passed some legislation dealing with that. Dealing with resources on the local level, they do not fund the local counties. That's up to the county commissioners. And our county commissioners are evaluating our security after this situation.

Mr. DELAHUNT. Okay. When did this incident occur?

Judge KENT. February 24 of this year.

Mr. DELAHUNT. February 24. So it's only several months.

Judge KENT. Absolutely.

Mr. DELAHUNT. Are there proposals before the county commission now?

Judge KENT. They are right now doing a security audit. And we've had some help from the U.S. Marshals Department to come over and help us with that security audit, to design better procedures to, hopefully, increase——

Mr. DELAHUNT. Is part of their work looking at the staffing needs?

Judge KENT. Absolutely. The staffing needs at the courthouse.

Mr. DELAHUNT. Okay. And have they come forward with, as we say, some hard cash?

Judge KENT. They have come forward with promises to look at the situation and see if the cash is available.

Mr. DELAHUNT. Okay. Again, you know, with all due respect to the Federal role here, we like to think we respect States' rights and, you know, this concept of devolution, because we're looking to the States to step up in many other categories. And I would think that this is one that we would be looking to the county commissioners.

Judge KENT. And I think the States do have to provide the boots-on-the-ground security. But I think there's a number of things Congress can do that will help enhance judicial security, other than providing that minute-minute funding.

Mr. DELAHUNT. Did I hear you say, was this a—how did this individual unload 70 rounds?

Judge KENT. He had, they said, an AK-47. He had a Mach-90, two clips; a high-powered rifle in his car; over 200 rounds in his car, a——

Mr. DELAHUNT. This was an automatic?

Judge KENT. Semi-automatic. A bulletproof vest, and a flack jacket. He was prepared for war, and he brought it to the courthouse.

Mr. DELAHUNT. Uh-huh. Uh-huh.

Judge KENT. But luckily, we had some gun power to return fire.

Mr. DELAHUNT. Right. You know, my friend from Texas here talks about the death penalty. You know, clearly, different States have different perspectives on that particular issue, as do I, you know. And as it pertains to Texas, what were the number of executions in the past year?

Judge KENT. Each year, it varies. I've seen some years where we've had 20, 30 executions. This year has not been nearly as high, up to this point, because it depends on the facts of the particular cases and the appeals that go through. We carefully look at the cases.

Mr. DELAHUNT. Right. In terms of the number of homicides in Texas, what's your homicide rate in Texas, per hundred thousand of population?

Judge KENT. I wish this simple country judge could tell you that. I'm sorry, I don't——

Mr. DELAHUNT. Judge Kent, I don't think you're a simple country judge. [Laughter.]

Judge KENT. I have—I have to beg to differ.

Mr. DELAHUNT. I think you're a very smart country judge. But you're not simple.

Judge KENT. I would tell you that the vast majority of murders in Texas are not prosecuted as capital murders. Capital murders are truly reserved for prosecution for the very, very narrow——

Mr. DELAHUNT. I'm not even—I guess I'm really debating, through you, my friend and colleague who's sitting in the Chair right now——

Judge KENT. Okay.

Mr. DELAHUNT.—about the deterrence effect of the death penalty.

Judge KENT. Well, it deters that one person.

Mr. DELAHUNT. Well, it does. But when one examines—and I would hope that maybe we could ask the staff of the Committee, both majority and minority counsel, to do a comparison between the homicide rate in the State of Texas, and I'll take my own State, the Commonwealth of Massachusetts. We're a non-capital-punishment State.

And I would suggest to you—and I'm guessing right now—but I'd suggest to you that the incidence of homicide in the Commonwealth of Massachusetts, which has no death penalty, and the State of Texas, which has, I understand, the highest rate of executions in the country—there'd be a considerable difference, in terms of the incidence of homicide per one hundred thousand population. And I guess that would be the empirical data that I would suggest that the death penalty isn't necessarily a deterrent.

Judge KENT. Well, and I—and, look, I'm not here to stand up for or against the death penalty.

Mr. DELAHUNT. Right.

Judge KENT. I really believe that that is an issue best left to the State legislature, as you said, to let each State determine what they think their law should be in this.

Mr. DELAHUNT. Well, I wish you would convey that particular sentiment to members of the—from Texas, my Texas colleagues here that sit on the Judiciary Committee. Thank you.

Mr. MCNULTY. Congressman? Mr. Delahunt, I think Virginia has a lower, probably, homicide rate than Massachusetts or Texas, and does have capital punishment.

Mr. DELAHUNT. Well, Mr. McNulty, then, let's take that—I'll take that challenge.

Mr. MCNULTY. Okay.

Mr. DELAHUNT. I think—seriously, I think because there are so many mandatory sentences and—if the Chair would indulge me for an additional minute?

Mr. GOHMERT. I will.

Mr. DELAHUNT. I think, you know, many of us feel very strongly in terms of a common and shared goal, which is to protect the judiciary and to protect witnesses and to make sure our judicial system is healthy and viable. But many of us, for a variety of different reasons—in my case, because as a State prosecutor for 22 years in a major metropolitan jurisdiction, you know, I did not see the benefit of mandatory sentencing; other than possibly, as the U.S. Attorney indicates, to develop an informant. And even then, there are other and better ways to do it, I would respectfully suggest.

But simply to implicate in every piece of criminal—of crime legislation and criminal justice legislation that comes before this Committee, the death penalty and mandatory sentencing, it just doesn't work.

And I know my friend, the former judge from Texas, disagrees with that. But maybe what we ought to do, not just on this particular legislation, but to have both our staffs work together to try to make a good-faith effort in determining the efficacy and effectiveness of the death penalty and mandatory sentencing, and start from a common position.

Because, like I said, I think that there are—I think there's much in this particular proposal that I can support. Unfortunately, you know, I dare say there are aspects of it that I can't.

Mr. GOHMERT. Thank you. The time of the gentlelady from Texas has expired. She'd been kind enough to yield to her colleague. Did you have a question?

Ms. JACKSON LEE. I didn't yield. I just let him go in front of me.

Mr. GOHMERT. Oh——

Ms. JACKSON LEE. I deferred.

Mr. GOHMERT. Deferred. I see.

Ms. JACKSON LEE. That's more appropriate. So I'm prepared to go at this time for my 5 minutes.

Mr. GOHMERT. All right, you may proceed for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much. And I thank the witnesses for their presentation and having the opportunity to look at your testimony. I was delayed at another meeting. And I thank you for your presence here.

Mr. Chairman, if I might just offer—first of all, I'd like to ask unanimous consent for my statement to be included in the record.

Mr. GOHMERT. Hearing no objection, it will be done.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Let me say to both of the judges; and certainly, welcome back Paul, and we've watched your work, and it's been a busy time in Virginia; and certainly, to the U.S. Marshal, who we worked closely with in the Southern District, of course, a very busy district; that we appreciate your service. Not only your service, but the different times in which you have to operate.

I don't think there's any Member here that would not enthusiastically—sadly, of course, because of what we have finally reached in terms of violence inside the courthouse and courtroom and the perimeters—to support a system or a review of the law, to ensure that we protect the Nation's courts, both State and Federal, which I think are crucial.

The tragedy in Chicago, the tragedy in your city, Judge Kent, the tragedy in Atlanta, Georgia, is intolerable. And we absolutely abhor it. And I believe we can fix it.

I hope the Chairman, who has authored this bill, will consider bills that have been written by Members on the other side of the aisle—one in particular that I am presently writing—so that this can be a bipartisan effort. And I think if we do it that way, we will protect the Nation's courts, both State and Federal.

I happen to think that, although the tenth amendment is a very strong amendment, that there are some issues that we must collaborate with the States and work on. Because the sanctity of the judicial system cannot be, if you will, held in high esteem or protected, if it's not protected throughout our system; local courts—which I served on, a city court in Houston—State courts, and of course, Federal and to the Supreme Court of the United States.

It would help me, Judge Kent, if you would just—this individual lost his life who was armed beyond even our imagination, was there any motive determined? I understand two individuals lost their lives, a woman and a child. Did they happen to be related, or did I have the wrong information on that?

Judge KENT. Well, it's close, Congresswoman. And I appreciate your asking the question with respect to that. The gentleman—the immediate motive was that he was involved in a child support custody hearing that was supposed to take place in just a few minutes after the shooting. And he didn't want to pay his child support. And so he killed his ex-wife; he shot his son. This was the 21-year-old son, not the four—the 10-year-old that the child support dealt with. He shot his son in the leg. The son survived.

It was a civilian who was shooting at him to stop him from this murderous rampage he was going on; shot him four times. However, he had a bulletproof vest on, and so the bullets did not stop him. He turned and killed the civilian. Then the law enforcement came out of the courthouse, out of my courtroom and Judge Rodgers' courtroom, and repelled the violence.

So he was heavily armed, and he was coming into that courthouse, if he hadn't killed her outside. And he would have killed more people in our town, had law enforcement not been able to respond to it.

Ms. JACKSON LEE. So obviously, we need to work collaboratively on protecting courts, regardless of the jurisdiction, is my perspective on this.

Let me pose a question to John Clark. I noticed that you've only got a 6 percent increase in your budget in fiscal year 2006. I don't know how you believe that that's going to be effective in the mass of work that you all do and, of course, in the increased sensitivity to the protecting of courts. Is that a sufficient amount?

Mr. CLARK. The simple answer is: No, it's not. In many cases, because of the increased workload, because of the demands that are being placed on the Marshals Service on an ever-increasing basis around the nation, particularly in a post-9/11 era, and speaking from the Eastern District of Virginia, as you know, we've had a tremendous revamping of our security around the courthouse in Alexandria, around the courthouse in Norfolk and Richmond, increase in prisoner population that has really skyrocketed——

Ms. JACKSON LEE. And if I may, because of the shortness of my time, you've given me a great piece to jump from. I see 3,800 contract security officers. I guess the question is not, is that effective; but wouldn't it be more effective to have additional resources for actual U.S. Marshals and have them in an integrated system? I'm reminded, as I said, of the Southern District.

And I'd ask the Chairman for unanimous consent for an additional minute.

Mr. GOHMERT. It will be granted.

Ms. JACKSON LEE. Thank you. For example, there's a rising influence of MS-13 gang members in the region that I come from. Plus, we are overloaded with drug cases, some of them very serious. Wouldn't it be wise to sort of look to an enhanced Marshals Service for some of these activities that are coming up?

Mr. CLARK. Yes, the contract security officers that work around the country protecting the interior of the courthouse do a tremendous job, and we're certainly glad to have them. But what we're faced with, that is from the workload level, often requires deputy marshals to handle those duties.

For example, as I think Judge Roth had pointed out earlier, protective measures, for example, require a tremendous amount of resources to pull off. When you think of protective a detail going 24/7 for one individual, if they have a family and they're going to the grocery store, you require deputy marshals to essentially escort and protect them, much like the President of the United States would be protected.

Ms. JACKSON LEE. So you need—we need a full complement, fuller than what we have, of U.S. Marshals. And I looked at Judge Gohmert's—I'm trying to pick it up here, sir—legislation. And I notice a lot of good stuff about retaliation and certainly some very good points. But I've always believed that prevention is—an ounce of prevention is worth a pound of cure. And when you look at our new philosophy on terrorism—and I sit on the Homeland Security Committee—it is to keep individuals from our shores. We certainly want to protect our homeland, but let's keep them from our shores.

And it seems that we need legislation that focuses on enhancing the prevention that's necessary; which, Judge Kent, that's State—on the State side. And I hope that the legislature responds to your needs, because I'd prefer you not having to pull your gun, if you will. I know we have a concealed weapons law and judges are al-

lowed to carry their weapons. But I think it's important to be preventative.

Might I just say this? And I know, Mr. Clark, you're trying to say something. Let me see if the Chairman will be gracious. But let me just say this. The bill has—that's before us right now, has a lot of merits to it. I have to join my colleague on the question of mandatory sentences, for this reason. It is because we have a conflicted Supreme Court case that has questioned mandatory sentencing.

I'd like the bill to be able to address these questions with the backdrop of that Supreme Court decision. And also, recognizing that judges, I think, have the ability to use their good discretion, and they know when a bad guy is before them, to know how to sentence them, both on the Federal and the State level. So that concerns me.

The other concern that I have is a broader question, because I've made the point that I want you all as safe as you possibly can be. We've just seen a report that says that our jails are overloaded. That means I want, if you will, the bad guys and the terrorists. We're loaded up with more people in jail than any nation in the world, and we're not the largest nation in the world. I think we've got some frivolous cases where people are being incarcerated. We need to address that question.

Mandatory sentencing adds to some of that frivolity, in terms of loading the courts and loading the system; where we need to address questions of providing security for our judges. I'd like to see our judges, if they call for it, have 24-hour coverage, State and Federal. That's money. That's resources. So we can pass legislation all day long, and we'll never get to the point.

I think the other thing is, of course, this is not a hearing on whether or not we enjoy your decisions; but I think this is an appropriate hearing to make the statement that conversation and statements by Members of Congress can be equally threatening, except for the fact that we have a speech and debate protection when we don't like judges' decisions. So I hope that we'll be restrained from commenting on judges' decisions at this point.

Let me close, Mr. Chairman—and thank you for your kindness—to simply say that, and to the Ranking Member, I want to thank him and Mr. Coble for this hearing. It may not be directly related, but I guess it's somewhat extended; and forgive me, not in any way taking—making light of the hearing here. I'm going to study this bill very carefully. I have a bill; I want to add some more dollars to the stated resources for the U.S. Marshals.

And I hope that I can, by that, work with the State system, Judge Kent, and provide maybe some coverage, depending on whether it's a Federal crime, and we can do that.

But I do think, Mr. Chairman, and to the Ranking Member, maybe we can have a hearing as well on whether or not law enforcement—which I respect greatly—should be handcuffing a 5-year-old. And I'm not sure where that takes us, but I think that that's really going beyond the pale and that we need to do——

Mr. GOHMERT. The 1-minute extension has expired.

Ms. JACKSON LEE. I do thank you, Mr. Chairman. I look forward to working with you, if you'd work with me, as I draft legislation.

And I'm going to be studying this issue, and also working with these courts and Mr. Clark. Thank you very much. I yield back.

Mr. GOHMERT. All right. Thank you. And I'd like to thank the witnesses for their testimony. The Subcommittee very much appreciates your contribution. This is a quite serious subject. And we do owe those who participate in the judicial process—not just judges, but the prosecutors, the witnesses, the jurors—we owe them a debt of gratitude. And we also owe them protection. So, I appreciate your assistance.

In order to ensure a full record and adequate consideration of this important issue, the record will be left open for additional submissions for seven days. Also, any written questions that Members wish to submit may be submitted within the same seven-day period.

This concludes the oversight hearing on H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005." We thank you all for your cooperation, and this Subcommittee stands adjourned.

[Whereupon, at 4:02 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman. I am pleased to join you to convene this hearing on securing our courts and protecting our judges and others associated with court operations. Unfortunately, I am unable to join you in supporting the bill before us, due to the extraneous political agenda that is the primary focus of the bill.

With several sensational incidents in recent years involving murders of judges, family members of judges, court personal and witnesses, and other victims, we have come to see the consequences of insufficient security for our court operations and persons associated with them. All are agreed that enhancement of security for our courts and all persons associated with them, is imperative. Yet, the proponents of H.R. 1751 have chosen to address those needs in a manner apparently calculated to prevent or undermine the prospects for broad, bi-partisan and general support for the effort.

Unfortunately, H.R. 1751 is yet another effort to use an appropriate issue of concern to the nation as a vehicle for extraneous, controversial and general provisions of law that are unnecessary, costly and counterproductive to that concern. Yet again in this Congress, we are considering a bill that purports to address a serious concern—the concern for adequate protection and security of judges and court related personnel—when, in its essence, the bill is merely a host for more draconian criminal penalties aimed at ensuring that bit players and major players in a crime face the same consequences.

Among other provisions, H.R. 175i contains 7 new death penalties, a speedy *habeas corpus* procedure to assure that people are put to death quicker and to increase the number by applying the provision *ex post facto,* 22 new mandatory minimum sentences, and provisions to punish attempts and conspiracies the same as completion of an offense. The habeas provision is especially troubling. Given that 119 death row inmates who have been exonerated from death penalties over the past 12 years after languishing on death row for many years, the impact of this provision would be to ensure such persons are executed before they have enough time for the evidence to develop to exonerate them. As with the "Effective Death Penalty Act of 1996," the public policy rationale undergirding this provision is apparently that it is more important for us to administer executions efficiently than it is for us to administer them accurately.

The public is clearly rethinking the appropriateness of the death penalty, in general, due to the evidence that it is ineffective in deterring crime, is racially discriminatory, and is more often than not found to be erroneously applied. In a 23-year comprehensive study of death penalties, 68% were found to be erroneously applied. So, it is not surprising that 119 people sentenced to death for murder over the past 12 years have been completely exonerated of those crimes. Nor is it surprising with such a sorry record of death penalty administrations that several states having abolished the death penalty, or had them overturned by courts, or placed moratoriams on their application while studies were being conducted, or just haven't applied one in many years. For example, Connecticut has not executed anyone in 45 years. Some have referenced the econometric research of economist Joanna M. Shepherd. More recently, she has done further analysis and elaboration on her research, noting that "executions deter murders in six states, . . . have no effect on murders in eight states, and . . . increase murders in thirteen states."

Mandatory minimum sentences clearly detract from the importance of the bill. Through rigorous study and analysis, they have been shown to be less effective, and thus, to waste money, when compared to more effective and less costly approaches,

to be discriminatorily applied, and to violate common sense. Moreover, the scheme of the mandatory minimum sentences in the bill appears arbitrary and is confusing. For example, under section 7 of the bill, any individual who threatens a witness, victim or informant in retaliation for his or her participation in a court proceeding would receive a 10 year mandatory minimum sentence. However, if the same individual threatened a federal judge (under section 2 of the bill) he or she would receive a mandatory minimum of 5 years.

I won't quote the numerous studies regarding the problems with mandatory minimum sentences here, but Mr. Chairman, when we combine the impact of this bill and its mandatory provisions with the impact of similar provisions in the gang bill and the drug bill we recently considered in this committee, clearly there will be a massive prison impact if they are enacted into law. The indications from Sentencing Commission assessments of the impact of the gang bill, alone, is in excess of $7 billion dollars over the next 10 years. So, I hope you will join me in requiring a prison impact assessment from the Department of Justice regarding these measures.

And just as clearly, Mr. Chairman, with the number of death penalties and mandatory minimum sentences we already have that would apply to the incidents we have seen in our courts, we are not talking about the kind of people who are discouraged by such measures. So, I look forward to the testimony of our witnesses with the hope it will be on what might actually enhance court security and not on these extraneous matters. Thank you, Chairman.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

While the problem of violence and threats against judges, court officials, and employees, witnesses and victims is not a new one, the problem is growing. Recent events—the killing of the Fulton County State judge and other court personnel in Atlanta, the murders of a United States District Judge Joan Lefkow's family members outside Chicago, Illinois, and the murders immediately outside the Tyler, Texas courthouse—have underscored the problem. According to the Administrative Office of United States Courts, there are almost 700 threats a year made against federal judges, and in numerous cases federal judges have had security details assigned to them for fear of attack by members of violent gangs, drug organizations and disgruntled litigants.

According to *The Third Branch,* the primary newsletter of the federal courts, at its March 2005 meeting, the Judicial Conference noted that off site security for judges is "of the gravest concern to the federal judiciary" and will be the top priority in discussions with the Attorney General and Director of the U.S. Marshals Service. In addition, the Conference approved a resolution calling for Justice Department and Marshals service leaders "to review fully and expeditiously all aspects of judicial security at judges' homes and other locations away from the courthouse. Let me say Mr. Chairman that I realize the importance of providing adequate protection for our Nation's judges. However, H.R. 1751 reaches too far.

Not only is it flooded with mandatory minimums, but it is imposes several new death penalties.

The United States Marshals Service is responsible for protecting Federal judge's and their families, and for security at Federal courthouses. There have been concerns raised as to the United States Marshals management and handling of judicial security, the manner in which it conducts threat assessments, and the recent staff cuts in the witness protection program. The United States Marshals claim that cuts and reallocations have been necessary because of inadequate federal funding of the service.

In addition, at the State and local level, there are significant court security and witness protection issues that have been identified. Judges in many States are inadequately protected, and there are no meaningful witness protection programs at the State and local level, where 90 percent of the criminal prosecutions occur.

PREPARED STATEMENT OF MARY MCQUEEN, PRESIDENT, NATIONAL CENTER FOR STATE COURTS

Chairman Coble, Member Scott, and Members of the Subcommittee,

On behalf of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), it is a privilege to provide testimony for consideration in the Subcommittee's hearing examining the security of the Nation's state and federal courts. The Conferences' memberships consist of the highest judicial offi-

cers and the state court administrators in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the Northern Mariana Islands and the Territories of American Samoa, Guam and the Virgin Islands. The National Center for State Courts (NCSC) serves as the Secretariat for the two Conferences and provides supportive services to state court leaders including original research, consulting services, publications, and national education programs.

We believe that Congress has an opportunity to make an important and tangible difference in improving the safety of our courts and upholding the fundamentals of our democratic society.

INTRODUCTION

This morning thousands of judges, prosecutors, public defenders, lawyers, law enforcement officers, court personnel, court reporters, jurors, witnesses, victims, and members of the general public entered a courthouse. They come for one purpose—seeking justice in a safe, neutral forum. What ensures that people can resolve their disputes, present evidence before a judge or jury and expect a judge to rule solely based upon the law, uninfluenced by intimidation? A forum free from fear, free from threats, and free from violence. People will not bring their disputes to courts if the likely consequence is intimidation or physical harm. Judges and jurors cannot pursue the truth if they or their families are threatened.

A democracy cannot long endure if those entrusted with resolving disputes are targets of violence and become enmeshed in an environment of fear and intimidation, if officers responsible for security do not have the resources to detect and respond, and if lawyers, parties and the public must evaluate their own personal safety in deciding whether to participate in the process. Freedom from such an environment and the ability to carry out the judicial responsibilities in an open and accessible manner are fundamental components of the exercise of the rule of law.

We appreciate the problems of violence in the workplace. Indeed, if there is any workplace in America where the potential for violence is great, it is the judicial workplace. People do not go to court for learning or education, entertainment or fun. People are often legally required to attend court. Jurors are summoned to court. Witnesses are subpoenaed to court. Defendants are compelled to go to court to face criminal charges or civil prosecution. Folks who have given up on resolving their disputes peaceably—disputes with their neighbors, disputes with their children, disputes with their families, disputes with their employers—go to court as their last resort. Emotions run high because these disputes invariably involve human relationships, and people's relationships evoke strong feelings. Also, there is the confrontation clause—the right to confront your accusers. Although most of us spend a lot of time trying to avoid problems or sweep them under the rug, in court you often directly confront your adversary.

Consequently, in the judicial workplace, there is confrontation between people under highly charged sets of emotional circumstances regarding disputes that they have been unable to peacefully resolve. There are winners and losers in court. Not only is there confrontation and emotion, but at least one of the parties will often leave feeling disappointed or angry that they have lost—and they have lost in some sort of a final, binding way. Frequently, both sides leave feeling that they have lost because of either the process or the court's ruling. Despite the fact there is no workplace with greater potential for violence it is also true that there is no workplace in America where it is more critical that the workplace be free of violence.

Access to peaceful resolution of disputes is fundamental to our system of government. Coupled with the principle of judicial independence these concepts are the envy of the world. Neither access to justice nor judicial independence can exist in an environment of intimidation, fear or violence. Under the rule of law, court proceedings are supposed to be open and public. How long will the proceedings be open to the public if members of the public, although invited to the courthouse, fear that they are going to become embroiled in some sort of a threatening, fearful, or violent situation?

Mr. Chairman, the recent events in Atlanta and Illinois show a disturbing pattern with regards to how some people view the judiciary as an institution. These attacks and threats towards members of the judicial branch are rapidly reaching a crisis point for us. Let me recount some recent examples that we were able to get from our members:

- *Alaska.* Most of the judges in this state have recently received threatening communications with repeated references to the Chicago murders. Last year, a serious communication to one judge required the intervention of the FBI last year. Also during this past year, large numbers of weapons have been confiscated as a result of magnetometer screenings.

- *Arizona.* In the past year, there has been a suicide outside a divorce court, a firebomb of a Justice of the Peace Court, death threats towards judges, a visit by a disturbed litigant to a judge's home, explicit communications with pictures and diagrams to judges on pending cases, and threats by constitutionalists to "arrest" and execute a judge.
- *California.* Various bomb threats have been received this past year, including an incident in which law enforcement was able to arrest the perpetrator before he was able to carry out the actual bombing, an incident in which a firebomb was discovered in a courthouse before it was able to go off, and an incident in which a litigant came into a clerk's office with a small home-made bomb. Explicit threats have been made against judges to carry out violence against them. Graffiti has been painted detailing threats against the court system. A court received correspondence that contained a vial of blood that tested positive for HIV and Hepatitis C. A wallet found in a courtroom with a description of a judge's car and license plate number. An individual with a pending court case was recently arrested videotaping the judges parking lot.
- *Mississippi.* Death threats have been made against several trial courts judges. Threats of destruction of property (buildings) and physical attacks on Justices of the Supreme Court have been made.
- *New Hampshire.* There was a recent incident where an individual entered a courthouse and attempted to assault a Court Security Officer during the screening process. A recent threat to "shoot up" one of the courthouses was also made.
- *New York.* The New York State court system receives approximately 140 death threats against judges a year.

Even though we do not have quantitative data to back this up, it is the impression of the state court leadership that the number and severity of these threats have been rising in recent years. Furthermore, given that the state courts try approximately 96 million cases per year, the opportunities for incidents and the magnitude of the problem cannot be overstated. Also, let me emphasize that while judges and court personnel are seriously at risk during any incident, the risk to the public is also significant.

THREATS AGAINST JUDGES

Since the Fulton County incident and the murders of U.S. District Judge Lefkow's husband and mother, we have been inundated with requests for information about threats that state court judges receive on the job. The simple fact of the matter is that, because of the cost of compiling such a large amount of data, we do not know the full extent of the problem.

In a survey by the family law section of the ABA, 60 percent of respondents indicated that an opposing party in a case had threatened them. From the federal Marshall's Service, we know that they record an average of 700 inappropriate communications and threats a year against federal judicial officials. This is a marked increase from the 1980s when the average was closer to 240 per year. If you compare the number of federal judges to the approximately 32,000 state court judges, there is the possibility that we may find a large number of judges that face or have faced some sort of physical threat.

Naturally we must always remember that the potential for violent attacks on judges is not limited to the courtroom. An aggressor who targets a specific judge may attack the weakest security link in that judge's world—most likely the home. While more difficult, this area of protection cannot be overlooked.

In order to better position courts and judges to deal with these threats we are proposing the following:

- **To Establish a Repository for a New Threat Assessment Database.**—Each state would establish a web-based site where threats could be reported and local action taken. Federal dollars could support each state in establishing these web-based sites. This coordinated effort would result in: 1) establishing and defining a core set of data elements used by each state and 2) obtaining data from states for analysis of trends and patterns. This information could then be used to assist states in preventing acts of domestic terrorism and crime and in enhancing their security procedures. By having the information from this threat database, we can target our resources where they will be most needed. Under the current system, most courts are taking an all or nothing approach with virtually no information to guide them in overall security planning.

- **To Establish a Tax Credit for Personal Security Systems for Public Officials that Receive Threats as a Result of Performing Their Public Duties**—Public officials, in order to protect themselves and their families, have had to purchase personal security systems as a result of threats and assaults. A tax credit is an appropriate way in which to offset these expenses.

Even though the second item may not be within the purview of this committee, we hope to count on your support as we forward it to the tax-writing committees.

FUNDING CHALLENGES

Perhaps the greatest challenge facing state courts wishing to implement enhanced security measures is the issue of resources. The majority of limited jurisdiction courts depend on local law enforcement for the personnel to operate the equipment, provide adequate response or run security operations in a courthouse. As you know, most local governments struggle to meet day-to-day operations of running their governments and have little options to improve or implement new security measures in courthouses. Because there is no adequate funding source, many courts report that they have no formal security plan.

CCJ/COSCA and the National Center for State Courts have been disseminating promising practices in the courthouse security area. Our efforts in this area have been well received. For example, we have circulated the "Ten Essential Elements for Courtroom Safety and Security." The National Center also has compiled a wealth of information for state courts looking to upgrade their court security. Materials range from sample local court security plans to specific recommendations in courthouse architectural design, computer disaster recovery, and equipment.

I must caution you that there is only so much that we can get out of streamlining and making better use of present resources. Sooner or later courts will need to find a way to pay for enhanced security measures. We hope that you will favorably consider our recommendations to allow state courts greater access to federal funds for much needed security improvements.

THE NEW DIMENSION—COURTHOUSE TERRORISM

On September 11, terrorist attacks threw New York City's court system in disarray because many court buildings and other criminal justice offices were located near the site of the World Trade Center. Three court security officers perished when they tried to assist in the rescue efforts. The Court of Claims Courthouse, located at Five World Trade Center was destroyed. Other courthouses were deep within the so-called 'frozen zone,' an area that city officials ordered off-limits to all but essential personnel.

The New York state court leadership, however, moved quickly to ensure that the disruption did not last more than one day. Under the leadership of New York State Chief Judge Judith Kaye, the focus of the hours following the attacks was to do everything possible to open all the courts.

The threat of terrorism has created a new dimension in courthouse security. The courthouse is a visible, tangible symbol of government. The September 11, 2001 attacks showed painfully the targets governments and other prominent buildings present. Thus courts, being a core function of American government, now suffer increased exposure to attacks from those external to the court process. They must be provided the same protection that is being provided to other government institutions in order to keep them open and accessible. The state courts are dealing with the threats posed by terrorism. We, however, need more assistance from the federal government as the large focus shifts to protecting the homeland. This is how you can help us.

As you know, there will be approximately $2.5 billion in federal funding for homeland security awarded in FY2005. As you may not know, very little of this money will go to state courts for dealing with the various terrorism-related threats. In a recent survey of COSCA members, 76% of the respondents reported that the court system had not received any Homeland Security funds. We need to be a part of this funding because terrorists often target the positive symbols of the American way of life like courts and the law. To improve on this, here are some concepts that we forward for your consideration:

- **To Create a New Federal Grant Program Specifically Targeted at Assessing and Enhancing State Court Security to Combat International and Domestic Terrorism**—This program would address the 10 Essential Elements for Courtroom Safety and Security as developed by CCJ/COSCA. The program would be modeled after the Court Improvement Program (CIP),

the successful federal/state court program that has assisted us in handling child abuse and neglect cases.

- **To Ensure that State Courts Are Eligible to Apply Directly for Federal Funding**—State and local courts have not been able to apply directly for some Department of Justice (DOJ) administered programs because of the definition of "unit of local government" that has been included in the enabling legislation for the various programs. The result of this language is that state and local courts are not able to apply directly for these funds, but must ask an executive agency to submit an application on their behalf. As part of the DOJ reauthorization and as new grant programs are created, we ask that the definition of eligible entities is broadened so that state and local courts can apply directly for federal grant funds. As an example, when the Violence Against Women Act (VAWA) was reauthorized in 2001, the reauthorization legislation contained specific language authorizing, "State and local courts (including juvenile courts) . . ." to apply directly for VAWA funds.
- **To Ensure that State Courts Are Included in the Planning for Disbursement of Federal Funding Administered by State Executive Agencies**—Statutory language for grant programs that impact the justice system should include specific language requiring consultation and consideration of state court needs. The language that we have suggested is as follows:

> "An assurance that, in the development of the grant application, the States and units of local governments took into consideration the needs of the state judicial branch in strengthening the administration of justice systems and specifically sought the advice of the chief of the highest court of the State and, where appropriate, the chief judge of the local court, with respect to the application."

NATIONAL SUMMIT ON COURT SECURITY

Shortly after the Atlanta and Chicago tragedies, with the Office of Justice Programs of the Department of Justice, the Conference of Chief Justices, the Conference of State Court Administrators, the American Judges Association, the National Association for Court Management, and the National Sheriffs Association as sponsors, we held a National Summit on Court Security on April 21, 2005. The Summit brought together all members of the court community to review current safety and security practices and needs in the courts. The discussions that occurred in the summit refined and reinforced the action items we are requesting in this testimony. We commend those who participated in the Summit. We are particularly grateful to Attorney General Gonzales and the Department of Justice's Office of Justice Programs for their leadership in embracing this priority and which provided the resources to hold the Summit.

CONCLUSION

The state courts of this country welcome the Judiciary Committee's interest in courthouse security. We look forward to working with the Committee to develop legislation that addresses courthouse security needs and takes into account the varied needs of the state courts of this country. We commend the Subcommittee for holding this hearing and recognizing the national interest in ensuring that our judiciary and courts must operate in a safe and secure environment.

LETTER FROM THE JUDICIAL CONFERENCE OF THE UNITED STATES, DATED APRIL 1, 2005, SUBMITTED BY THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

APR 11 REC'D

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

April 1, 2005

Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism
and Homeland Security
Committee on the Judiciary
United States House of Representatives
207 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to provide the views of the Judicial Conference of the United States with regard to H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005," as introduced on March 15, 2005.

The bill would amend title 18, United States Code, to allow a significant increase in the prosecution of members of criminal street gangs and facilitate the prosecution of juvenile members. The bill would also authorize appropriations for the hiring of federal prosecutors to prosecute gangs.

In particular, section 115 of the bill would amend 18 U.S.C. § 5032 to allow a juvenile who is prosecuted for one of the specified crimes of violence or firearms offenses to "be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted as an adult of any lesser included offense." Given that joinder of offenses is liberally allowed under the Rules, and that this section of the bill further provides that the determination of the Attorney General to prosecute a juvenile as an adult "is not subject to judicial review in any court," this provision could result in the federal prosecution of juveniles for myriad offenses if they are also prosecuted for a felony crime of violence or firearms offense.

As you know, the primary responsibility for prosecuting juveniles has traditionally been reserved for the states. The federal criminal justice system has little experience and few resources to deal with more than the handful of juveniles that currently are in the federal system. The Judicial Conference has maintained a long-standing position that criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts. At its September 1997 meeting, after similar legislation had been proposed by Congress, the Judicial Conference affirmed that this policy is particularly applicable to the prosecution of juveniles.[1]

In his *Year-End Report on the Federal Judiciary* (Dec. 30, 1993) (emphasis added) the Chief Justice discussed the federalization provisions in a previous omnibus crime bill, specifically noting the juvenile provisions:

> Recent actions on a crime bill also reflect a natural response to growing concerns about crime. Unfortunately proposed legislative responses have expanded – unwisely in my view – the role of the federal courts in the administration of criminal justice. The federal courts have an important role to play in the war against crime, but I urge Congress to review carefully the impact on the federal courts, and on the traditional balance between state and federal jurisdiction, before adopting the more expansive proposals in the crime bill. Serious consideration should be given to the state courts in handling their traditional jurisdiction, rather than sweeping many newly created crimes, *such as those involving juveniles*, and handgun murders, into a federal court system that is ill-equipped to deal with those problems and will increasingly lack the resources in this era of austerity.

Juvenile defendants present unique problems that the federal judicial system is not prepared to deal with at the present time. When prosecuted as juveniles, the many procedural safeguards built into the juvenile statutes make these cases difficult to prosecute and adjudicate. Furthermore, whether prosecuted as juveniles or as adults, juveniles present unique behavioral and adjustment problems that must be addressed by probation and pretrial services officers. There are few federal probation officers who have training or experience to handle difficult juvenile offenders. Thus, in the event this

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[1]JCUS-SEP 97, p. 65.

legislation goes forward, the Conference urges that sufficient appropriations be authorized to provide this necessary training.

Further, we would note that juvenile offenders require different and perhaps more extensive correctional and rehabilitative programs than adults and that there is not a single, federal correctional facility to meet these needs.

The Conference recognizes that the federal judiciary fulfills an important role in the adjudication of offenses committed by juveniles when the unique resources of the federal government can be effectively and efficiently utilized. Such offenses include juvenile criminal activity with substantial multi-state or international aspects or involving complex enterprises most effectively prosecuted using federal resources or expertise. However, the states should continue their traditional role of prosecuting the vast majority of juvenile cases in which there is no significant interstate or national interest. Any expansion of the federal role in this area should be carefully considered in light of this appropriate allocation of responsibilities.

H.R. 1279 also includes a variety of new, mandatory minimum sentencing provisions. Since 1953, the Judicial Conference has maintained opposition to mandatory minimum sentences.[2] The reason is manifest: Mandatory minimums severely distort and damage the federal sentencing system. Mandatory minimums undermine the Sentencing Guideline regime Congress so carefully established in the Sentencing Reform Act of 1984 by preventing the rational development of guidelines that reduce unwarranted disparity and provide proportionality and fairness.[3] Mandatory minimums also destroy honesty in sentencing by encouraging "charge and fact" plea bargains. In fact, the U.S. Sentencing Commission has documented that mandatory minimums have the opposite of their

[2]JCUS-SEP 53, p. 28.

[3]Although the Sentencing Guidelines are advisory in light of the Supreme Court's recent decision in *United States v. Booker*, ___ U.S. ___, 125 S.Ct. 738 (2005), sentencing courts still must consider the Guidelines in determining an appropriate sentence, which on appeal would be subject to review for "reasonableness" in consideration of the Guidelines and other factors set forth in 18 U.S.C. § 3553(a).

intended effect.[4] Far from fostering certainty in punishment, mandatory minimums result in unwarranted sentencing disparity. Mandatory minimums also treat dissimilar offenders in a similar manner, although these offenders can be quite different with respect to the seriousness of their conduct or their danger to society. Finally, mandatory minimums require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment.

Accordingly, we respectfully request that the expansion of the federal criminal justice system over juvenile offenders be seriously reconsidered and that the mandatory minimum sentencing provisions be removed from the bill.

We appreciate the opportunity to comment on this significant legislation. If you have any questions, please have your staff contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, at (202) 502-1700.

Sincerely,

Leonidas Ralph Mecham
Secretary

cc: Honorable Bobby Scott
Ranking Democrat

Members
House Judiciary Subcommittee
on Crime, Terrorism and Homeland Security

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[4] *See* U.S. Sentencing Commission, *Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (August 1991). *See also Federal Mandatory Minimum Sentencing: Hearing Before the Subcommittee on Crime and Criminal Justice of the House Judiciary Committee*, 103rd Cong., 1st Sess. 64-80 (1995) (statement of Judge William W. Wilkins, Jr., Chairman, U.S. Sentencing Commission).

RESPONSE TO POST-HEARING QUESTIONS FROM THE HONORABLE PAUL J. MCNULTY, UNITED STATES ATTORNEY, EASTERN DISTRICT OF VIRGINIA

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 8, 2005

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism,
and Homeland Security
Committee on the Judiciary
Washington, D.C. 20515

Dear Mr. Chairman:

Please find enclosed responses to a question arising from the April 26, 2005, appearance before the Subcommittee of United States Attorney Paul McNulty, concerning H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005." Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

cc: The Honorable Bobby Scott
Ranking Minority Member

Question Arising from the April 26, 2005, Appearance of
United States Attorney Paul McNulty
Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
Concerning
H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005"

Section 10 of [H.R.] 1751 modifies federal habeas review of State court death penalty convictions for the killing of a State judge or public safety officer. Do you think that such a provision would have any positive impact on the handling of federal habeas petitions? Please explain.

Response:

While I can only respond as one person who has observed the habeas process over many years and not as a representative of the Department of Justice, I believe that section 10 of H.R. 1751 would have a positive effect on the conduct and disposition of Federal habeas proceedings. As Prime Minister William Gladstone explained in the 19th century, "Justice delayed is justice denied." This is an ancient concept that dates back to 1215 and King John's Magna Carta: "[T]o no one will we refuse or delay, right or justice." All too often, we have lost sight of this fundamental principle when enacting new criminal procedures. However, section 10 of H.R. 1751 recognizes that victims, the families of victims, and law-abiding citizens are entitled to justice no less than convicted murderers seeking further review of claims already rejected by State courts.

This legislation would serve the interests of justice by preventing extended delays beyond the point necessary for a full and fair adjudication of a convicted murderer's claims. Swift and certain justice should be the rule, not the exception. If defects in the State court proceedings require a new trial, justice requires that the decision to overturn a State court conviction be made sooner rather than later. Such a decision must be made before blurred memories and the loss of evidence make retrial difficult or impossible. These concerns are particularly acute in cases involving killings of judges or other public safety officers, because such crimes strike at the heart of the rule of law and the system of public order that enforces it.

Section 10 of H.R. 1751 addresses these concerns in two ways. First, the legislation would limit the jurisdiction of Federal courts to those cases in which the convicted killers of judges or public safety officers claimed "actual innocence." Second, the bill would establish reasonable time frames for the consideration and determination of such claims.

By restricting the type of reviewable claims to a defined range of "actual innocence" claims, the legislation clearly will have a positive impact on the handling of habeas claims arising from State court convictions. With fewer claims to review – and those limited to a particularly compelling class of claims – the net effect of the legislation should be to reduce the overall resources required for habeas review and to expedite the review of habeas cases involving

the killing of State judges or public safety officers.

By imposing time limitations that afford the court, the State, and the petitioner sufficient time for argument and deliberation, but do not countenance delay that exceeds these requirements, the legislation will help to clear the backlog of post-conviction litigation that currently prevents the families of murder victims from obtaining the closure and finality they deserve. The fact that a particular judge may not be inclined to resolve these habeas matters or may prefer to attend instead to other matters is not a sufficient reason to allow these cases to drag on for years.

Remedial efforts to correct overly broad Federal habeas corpus review – both by Congress and by the Supreme Court – are hardly a novelty. There are numerous statutory and jurisprudential limitations on habeas review. To the extent that the existing constraints have proven ineffective in securing a reasonably prompt and final disposition of Federal habeas review, it is appropriate for Congress to consider and adopt additional measures to that end.

Finally, cases involving the killing of public safety officers are not the only type in which reforms of this sort may be appropriate. Problems of abuse of collateral proceedings and litigation delay also exist in cases in which the victims are not State judges or public safety officers. But Congress may appropriately address this problem one step at a time, focusing first on areas in which the problem is most egregiously harmful to the administration of justice. Accordingly, I believe that the measures proposed in section 10 of the bill would have a positive impact on the handling of Federal habeas petitions.